

# **African Conference on the Rule of Law**

**Lagos, Nigeria  
January 3-7, 1961**

**A REPORT ON THE PROCEEDINGS OF THE CONFERENCE**

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**INTERNATIONAL COMMISSION OF JURISTS  
GENEVE**

**1961**

The International Commission of Jurists is a non-governmental organization which has Consultative Status, Category "B", with the United Nations Economic and Social Council. The Commission seeks to foster understanding of and respect for the Rule of Law. The Members of the Commission are :

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VIVIAN BOSE (President)	Former Judge of the Supreme Court of India
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J. J. CARBAJAL VICTORICA	Attorney-at-Law; Professor of Public Law at the University of Montevideo, Uruguay; former Minister
U CHAN HTOON	Judge of the Supreme Court of the Union of Burma
A. J. M. VAN DAL	Attorney-at-Law at the Supreme Court of the Netherlands
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# TABLE OF CONTENTS

INTRODUCTION by Jean-Flavien Lalive . . . . .	5
<b>I. GENERAL INFORMATION ON THE CONFERENCE</b>	
LAW OF LAGOS . . . . .	11
DECLARATION OF DELHI . . . . .	12
ACT OF ATHENS . . . . .	13
CONCLUSIONS OF THE CONFERENCE . . . . .	15
LIST OF PARTICIPANTS AND OBSERVERS . . . . .	23
PROGRAMME OF THE CONFERENCE . . . . .	32
<b>II. WORKING PAPERS OF THE CONFERENCE</b>	
DRAFT OUTLINE FOR THE NATIONAL REPORTS FOR THE AFRICAN CONFERENCE . . . . .	37
LIST OF NATIONAL REPORTS . . . . .	40
GENERAL REPORT by Dr. T. O. Elias . . . . .	42
INTRODUCTORY REPORT TO THE FIRST COMMITTEE by A. Wade . . . . .	56
INTRODUCTORY REPORT TO THE THIRD COMMITTEE by H. Chitepo . . . . .	69
<b>III. PROCEEDINGS OF THE CONFERENCE</b>	
OPENING PLENARY SESSION . . . . .	85
FIRST COMMITTEE . . . . .	96
SECOND COMMITTEE . . . . .	115
THIRD COMMITTEE . . . . .	133
PLENARY SESSION . . . . .	157
CLOSING PLENARY SESSION . . . . .	161

## FOREWORD

The International Commission of Jurists went to Africa, not to preach any revealed Truth, but to open a debate. This debate has no fixed time limit – on the contrary, the danger lies rather in winding it up too hastily or prematurely.

The initiative of the Commission in calling an African Conference, and inviting to it in their personal capacities lawyers from the different countries South of the Sahara, sprang from a realisation of the deep-rooted love of justice inherent in African tradition; the intention was to measure against this tradition the legal systems which are the legacy of the colonial powers, and to assess the political situation in the newly-independent States in the lights of the guiding principles of the Rule of Law.

As is known, the principle objective of the International Commission of Jurists is to act as the guardian of human rights and fundamental freedoms in order to “protect the individual against arbitrary acts of government and to enable him to enjoy fundamental human dignity”. The main conclusion that emerged from the Lagos Conference was that the dignity of the human person is a universal concept, regardless of the different forms it may assume in one or another cultural environment. African lawyers emphatically rejected any notion of a purely African juridical system, as distinct from other systems, constructed solely on the basis of native custom. Africans have elaborated a concept of human dignity during the crucial years leading to their emancipation which recognises no limitations whatsoever.

At Lagos, African lawyers proclaimed their faith in the Rule of Law and the *Conclusions* of the Delhi Congress. They declared that they would be guided by local tradition and equally by foreign example. They have thus shown that the Rule of Law is in fact a concept shared by countries “having varying political structures and economic background” and that it is not bound up with any particular ideology. Africa is fortunate in that it may choose freely. Wisdom would dictate fusing the best elements of its own way of life with those characteristic of other parts of the world.

Observers at the Lagos Conference from other continents were deeply impressed by the African lawyers' determination to avoid sacrificing fundamental freedoms to economic and technological development. It is quite evident that the new African States must simultaneously cope with establishing their political institutions,

developing their economy and settling their social structure, without abandoning, if at all possible, the most valuable elements of their traditional institutions, such as the solidarity of the community and the family.

Confronted with an order of priorities, African lawyers persist in the belief that the protection of human rights is the only solid basis for any new society. They are fully aware of the threats to personal freedom in some countries despite their newly-won political autonomy. They have only recently gained emancipation from colonial rule, and have no intention of falling prey to any homegrown despotism. For instance, the administrative power of detention without trial, in itself to be condemned, does not become any more commendable because it happens to be exercised by a national government with wide popular support; on the contrary, this makes it all the more regrettable.

African lawyers' concern for personal freedoms was highlighted at the Congress by the proposal made by some of them that an African convention for the protection of human rights be drafted. The convention would fit into an international system for the protection of human rights, already existing in Europe and taking form in Latin America. The suggestion found support, which shows that the first stage towards African unity might well be some form of uniform and coordinated safeguard of the basic rights having effect in all African countries.

The Lagos Conference was an appreciable step forward towards the union of Africa in yet another way. The participants were drawn equally from the English-speaking and French-speaking countries; for many of them this was their first opportunity to meet lawyers brought up in a legal system quite different from their own. They were able to appreciate the importance of education in comparative law and the value of foreign language studies. African universities are in fact paying great attention to these two subjects, and undoubtedly have a decisive role to play in encouraging cultural exchanges throughout the continent.

This report will give some indication of the significance of the Lagos Conference in the campaign of the International Commission of Jurists to ensure that the Rule of Law prevails all over the world. The reassertion of the *Act of Athens* and the *Declaration of Delhi* is a further step in the process. While the Members of the Commission, representing all continents, are dedicated to defending the Rule of Law conceived as "a dynamic concept" destined to "safeguard and advance the civil and political rights of the individual in a free society", the *Law of Lagos* and the conclusions adopted by the African Conference place the stress on the problems with which the dependent peoples are still confronted. The *Law of Lagos* states that the Rule of Law "cannot be fully realised unless legislative bodies have been established in accordance with the will of the people who have adopted their Constitution freely". This

vital principle, adopted unanimously by the Conference, derives from the concept of the Rule of Law as defined by the Athens and New Delhi Congresses. When read together with the declaration that "the principles embodied in the *Conclusions* (of the Lagos Conference) should apply to any society, whether free or otherwise", this expresses a conviction shared by the participants in the Conference and by the International Commission of Jurists, namely, that while governments still responsible for the administration of colonial territories should respect the Rule of Law in exercising those responsibilities, the Rule of Law will not truly prevail in such territories until they have achieved political independence. A new element has, therefore, been incorporated in the concept of the Rule of Law, expressed in the *Law of Lagos* as follows: "in order to maintain adequately the Rule of Law all Governments should adhere to the principle of democratic representation in their Legislatures".

The three committees of the Lagos Conference drafted and adopted far-reaching conclusions on delegated legislative authority, state of emergency powers, penal and administrative law and the responsibility of the Judiciary and of the Bar for the protection of the rights of the individual. The high level on which the discussions were conducted and the unanimous adoption of the final decisions testify to the respect of African lawyers for the principles of law and justice.

At the end of five days of plenary sessions and committee meetings, the 194 participants left the Nigerian capital firmly resolved to carry on in their individual spheres of activity the work started by the Conference, with the aim of making the world a better place for coming generations. The International Commission of Jurists and its African National Sections know how full of promise is the future of Africa for the cause of peace, freedom and justice; they will help it to fulfil this promise by encouraging the spread of humanism in law, based on the respect for human dignity in a context of social and economic justice.

Geneva  
June 1961

Jean-Flavien LALIVE  
Secretary-General

**I**

**GENERAL INFORMATION ON THE  
CONFERENCE**

## LAW OF LAGOS

The African Conference on the Rule of Law consisting of 194 judges, practising lawyers and teachers of law from 23 African nations as well as 9 countries of other continents,

Assembled in Lagos, Nigeria, in January 1961 under the aegis of the International Commission of Jurists,

Having discussed freely and frankly the Rule of Law with particular reference to Africa, and

Having reached conclusions regarding Human Rights in relation to Government security, Human Rights in relation to aspects of criminal and administrative law, and the responsibility of the Judiciary and of the Bar for the protection of the rights of the individual in society,

### NOW SOLEMNLY

Recognizes that the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent,

Reaffirms the Act of Athens and the Declaration of Delhi with special reference to Africa and

### Declares

1. That the principles embodied in the Conclusions of this Conference which are annexed hereto should apply to any society, whether free or otherwise, but that the Rule of Law cannot be fully realized unless legislative bodies have been established in accordance with the will of people who have adopted their Constitution freely;
2. That in order to maintain adequately the Rule of Law all Governments should adhere to the principle of democratic representation in their Legislatures;
3. That fundamental human rights, especially the right to personal liberty, should be written and entrenched in the Constitutions of all countries and that such personal liberty should not in peacetime be restricted without trial in a Court of Law;
4. That in order to give full effect to the Universal Declaration of Human Rights of 1948, this Conference invites the African Governments to study the possibility of adopting an African Convention of Human Rights in such a manner that the Conclusions of this Conference will be safeguarded by the creation of a court of appropriate jurisdiction and that recourse thereto be made available for all persons under the jurisdiction of the signatory States;
5. That in order to promote the principles and the practical application of the Rule of Law, the judges, practising lawyers and teachers of law in African countries should take steps to establish branches of the International Commission of Jurists.

This Resolution shall be known as the Law of Lagos.

Done at Lagos this 7th day of January 1961.



## DECLARATION OF DELHI

This International Congress of Jurists, consisting of 185 judges, practising lawyers and teachers of law from 53 countries, assembled in New Delhi in January 1959 under the aegis of the International Commission of Jurists, having discussed freely and frankly the Rule of Law and the administration of justice throughout the world, and having reached conclusions regarding the legislative, the executive, the criminal process, the judiciary and the legal profession, which conclusions are annexed to this Declaration,

### NOW SOLEMNLY

Reaffirms the principles expressed in the Act of Athens adopted by the International Congress of Jurists in June 1955, particularly that an independent judiciary and legal profession are essential to the maintenance of the Rule of Law and to the proper administration of justice;

Recognizes that the Rule of Law is a dynamic concept for the expansion and fulfilment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized;

Calls on the jurists in all countries to give effect in their own communities to the principles expressed in the conclusions of the Congress; and finally

Requests the International Commission of Jurists

1. To employ its full resources to give practical effect throughout the world to the principles expressed in the conclusions of the Congress.
2. To give special attention and assistance to countries now in the process of establishing, reorganizing or consolidating their political and legal institutions.
3. To encourage law students and the junior members of the legal profession to support the Rule of Law.
4. To communicate this Declaration and the annexed conclusions to governments, to interested international organizations, and to associations of lawyers throughout the world.

This Declaration shall be known as the Declaration of Delhi.

Done at Delhi this 10th day of January 1959.

## ACT OF ATHENS

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We free jurists from forty-eight countries, assembled in Athens at the invitation of the International Commission of Jurists, being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all,

Being concerned by the disregard of the Rule of Law in various parts of the world, and being convinced that the maintenance of the fundamental principles of justice is essential to a lasting peace throughout the world,

Do solemnly Declare that:

1. The State is subject to the law.
2. Governments should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement.
3. Judges should be guided by Rule of Law, protect and enforce it without fear or favor and resist any encroachments by governments or political parties on their independence as judges.
4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.

And we call upon all judges and lawyers to observe the principles and

Request the International Commission of Jurists to dedicate itself to the universal acceptance of these principles and expose and denounce all violations of the Rule of Law.

Done at Athens this 18th day of June 1955.

# **AFRICAN CONFERENCE ON THE RULE OF LAW**

**LAGOS, NIGERIA**

**1961**

## **CONCLUSIONS**

**(approved January 7, 1961)**

### **COMMITTEE I**

#### **Human Rights and Government Security – the Legislative, Executive and Judiciary**

##### **CLAUSE I**

1. The exigencies of modern society necessitate the practice of the Legislature delegating to the Executive the power to make rules having the force of legislation.
2. The power of the Executive to make rules or regulations having legislative effect should derive from the express mandate of the Legislature; these rules and regulations should be subject to approval by that body. The object and scope of such executive power should be clearly defined.
3. The Judiciary should be given the jurisdiction to determine in every case upon application whether the circumstances have arisen or the conditions have been fulfilled under which such power is to be or has been exercised.
4. Every constitution should provide that, except during a period of emergency, legislation should as far as possible be delegated only in respect of matters of economic and social character and that the exercise of such powers should not infringe upon fundamental human rights.
5. The proclamation of a state of emergency is a matter of most serious concern as it directly affects and may infringe upon human rights. It is the sense of the Conference that the dangers of survival of the nation such as arise from a sudden military challenge may call for urgent and drastic measures by the Executive which by the nature of things are susceptible only to *a posteriori* legislative

ratification and judicial review. In any other case, however, it is the Parliament duly convened for the purpose that should declare whether or not the state of emergency exists. Wherever it is impossible or inexpedient to summon Parliament for this purpose, for example during Parliamentary recess, the Executive should be competent to declare a state of emergency, but in such a case Parliament should meet as soon as possible thereafter.

6. The Conference is of the opinion that real danger exists when, to quote the words of the General Rapporteur, "The citizenry, whether by legislative or executive action, or abuse of the judicial process, are made to live as if in a perpetual state of emergency."

7. The Conference feels that in all cases of the exercise of emergency powers, any person who is aggrieved by the violation of his rights should have access to the courts for determination whether the power has been lawfully exercised.

## **CLAUSE II**

The Conference, having considered the relative rights and obligations of legislative, executive and judicial institutions and their functions as affecting human rights and government security with particular reference to the observance of the Rule of Law in both independent and dependent countries in Africa and elsewhere; and having taken cognizance of allegations that discriminatory legislation based on race, colour or creed exists to the detriment of fundamental human rights of large sections of the population,

Requests the International Commission of Jurists to investigate, examine, consider and report on the legal conditions in Africa and elsewhere with particular regard to the existence of the Rule of Law and the observation of fundamental human rights.

## **COMMITTEE II**

### **Human Rights and Aspects of Criminal and Administrative Law**

The Rule of Law is of universal validity and application as it embraces those institutions and principles of justice which are considered minimal to the assurance of human rights and the dignity of man.

Further as a preamble to these Conclusions it is decided to adopt the following text from the Conclusions of the Second Committee of the International Congress of Jurists, New Delhi, India, 1959:

"The Rule of Law depends not only on the provision of adequate safeguards against abuse of power by the Executive, but also on the existence of effective government capable of maintaining law and order and of ensuring adequate social and economic conditions of life for the society.

"The following propositions relating to the Executive and the Rule of Law are accordingly formulated on the basis of certain conditions which are either satisfied, or in the case of newly independent countries still struggling with difficult economic and social problems are in process of being satisfied. These conditions require the existence of an Executive invested with sufficient power and resources to discharge its functions with efficiency and integrity. They require the existence of a Legislature elected by democratic process and not subject, either in the manner of its election or otherwise, to manipulation by the Executive. They require the existence of an independent Judiciary which will discharge its duties fearlessly. They finally call for the earnest endeavour of government to achieve such social and economic conditions within a society as will ensure a reasonable standard of economic security, social welfare and education for the mass of the people."

1. Taking full cognizance of and incorporating herein by reference Clause III 3 (a) of the Conclusions of the First Committee of the above-mentioned International Congress of Jurists in New Delhi,<sup>1</sup> it is recognized and agreed that legislation authorizing administrative action by the Executive should not be discriminatory with respect to race, creed, sex or other such reasons and any such discriminatory provisions contained in legislation are considered contrary to the Rule of Law.

2. While recognizing that inquiry into the merits of the propriety of an individual administrative act by the Executive may in many cases not be appropriate for the ordinary courts, it is agreed that there should be available to the person aggrieved a right of access to:

- (a) a hierarchy of administrative courts of independent jurisdiction; or
- (b) where these do not exist, to an administrative tribunal subject to the overriding authority of the ordinary courts.

3. The minimum requirements for such administrative action and subsequent judicial review as recommended in paragraph 2 above are as follows:

- (a) that the full reasons for the action of the Executive be made known to the person aggrieved; and

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<sup>1</sup> "The Legislative 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."

- (b) that the aggrieved person shall be given a fair hearing; and
- (c) that the grounds given by the Executive for its action shall not be regarded as conclusive but shall be objectively considered by the court.

4. It is desirable that, whenever reasonable in the prevailing circumstances, the action of the Executive shall be suspended while under review by the courts.

5. (i) No person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offence; further, except during a public emergency, preventive detention without trial is held to be contrary to the Rule of Law.

(ii) During a period of public emergency, legislation often authorizes preventive detention of an individual if the Executive finds that public security so requires. Such legislation should provide the individual with safeguards against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention with a right to judicial review. It should be required that any declaration of public emergency by the Executive be reported to and subject to ratification by the Legislature. Moreover, both the declaration of public emergency and any consequent detention of individuals should be effective only for a specified and limited period of time (not exceeding six months).

(iii) Extension of the period of public emergency should be effected by the Legislature only after careful and deliberate consideration of the necessity therefor. Finally, during any period of public emergency the Executive should only take such measures as are reasonably justifiable for the purpose of dealing with the situation which exists during that period.

6. The courts and magistrates shall permit an accused person to be or to remain free pending trial except in the following cases which are deemed proper grounds for refusing bail:

- (a) in the case of a very grave offence;
- (b) if the accused is likely to interfere with witnesses or impede the course of justice;
- (c) if the accused is likely to commit the same or other offences;
- (d) if the accused may fail to appear for trial.

7. The power to grant bail is a judicial function which shall not be subject to control by the Executive. Although a court should hear

and consider the views and representations of the Executive, the fact that investigation of the case is being continued is not a sufficient ground for refusing bail. Bail should be commensurate with the economic means of the accused, and, whether by appeal or independent application, a higher court should have the power to release provisionally an accused person who has been denied bail by the lower court.

8. After conviction and pending review the trial or appellate court should have discretionary power to admit the convicted person to bail subject to the grounds set forth in paragraph 6 above.

9. It is recommended that greater use be made of the summons requiring appearance in court to answer a criminal charge in place of arrest and the consequent necessity for bail and provisional release.

### **COMMITTEE III**

#### **The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society**

The Conference reaffirms the Conclusions reached by the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, which are appended hereto; and having regard to the particular problems of emerging states, wishes to emphasize certain points in particular, and to add others.

1. In a free society practising the Rule of Law, it is essential that the absolute independence of the Judiciary be guaranteed. Members of the legal profession in any country have, over and above their ordinary duties as citizens, a special duty to seek ways and means of securing in their own country the maximum degree of independence for the Judiciary.

2. It is recognized that in different countries there are different ways of appointing, promoting and removing judges by means of action taken by the executive and legislative powers. It is not recommended that these powers should be abrogated where they have been universally accepted over a long period as working well – provided that they conform to the principles expressed in Clauses II, III, IV and V of the Report of the Fourth Committee at New Delhi.

3. In respect of any country in which the methods of appointing, promoting and removing judges are not yet fully settled, or do not ensure the independence of the Judiciary, it is recommended:

- (a) that these powers should not be put into the hands of the Executive or the Legislative, but should be entrusted exclusively to an independent organ such as the Judicial Service Commission of Nigeria or the *Conseil supérieur de la magistrature* in the African French-speaking countries;
- (b) that in any country in which the independence of the Judiciary is not already fully secured in accordance with these principles, they should be implemented immediately in respect of all judges, especially those having criminal jurisdiction.

4. It is recommended that all customary, traditional or local law should be administered by the ordinary courts of the land, and emphasized that for so long as that law is administered by special courts, all the principles enunciated here and at New Delhi, for safeguarding the Rule of Law, apply to those courts.

5. The practice whereby in certain territories judicial powers especially in criminal matters, are exercised by persons who have no adequate legal training or experience, or who as administrative officers are subject to the control of the Executive is one which falls short of the Rule of Law.

- 6. (a) To maintain the respect for the Rule of Law it is necessary that the legal profession should be free from any interference.
- (b) In countries where an organized Bar exists, the lawyers themselves should have the right to control the admission to the profession and the discipline of the members according to rules established by law.
- (c) In countries where an organized Bar does not exist, the power to discipline lawyers should be exercised by the Judiciary in consultation with senior practising lawyers and never by the Executive.

7. The Conference reaffirms Clause X of the Conclusions of the Fourth Committee at New Delhi, and recommends that all steps should be taken to ensure equal access to law for both rich and poor, especially by a provision for and an organization of a system of Legal Aid in both criminal and civil matters.

8. The Conference expressly re-affirms the principle that retro-active legislation especially in criminal matters is inconsistent with the Rule of Law.



## Appendix

### INTERNATIONAL CONGRESS OF JURISTS, NEW DELHI, 1959 REPORT OF COMMITTEE IV

#### **The Judiciary and the Legal Profession under the Rule of Law**

##### **CLAUSE I**

An independent Judiciary is an indispensable requisite of a free society under the Rule of Law. Such independence implies freedom from interference by the Executive or Legislative with the exercise of the judicial function, but does not mean that the judge is entitled to act in an arbitrary manner. His duty is to interpret the law and the fundamental principles and assumptions that underlie it. It is implicit in the concept of independence set out in the present paragraph that provision should be made for the adequate remuneration of the Judiciary and that a judge's right to the remuneration settled for his office should not during his term of office be altered to his disadvantage.

##### **CLAUSE II**

There are in different countries varying ways in which the Judiciary are appointed, re-appointed (where re-appointment arises) and promoted, involving the Legislative, Executive, the Judiciary itself, in some countries the representatives of the practising legal profession, or a combination of two or more of these bodies. The selection of judges by election and particularly by re-election, as in some countries, presents special risks to the independence of the Judiciary which are more likely to be avoided only where tradition has circumscribed by prior agreement the list of candidates and has limited political controversy. There are also potential dangers in exclusive appointment by the Legislative, Executive, or Judiciary, and where there is on the whole general satisfaction with the calibre and independence of judges it will be found that either in law or in practice there is some degree of co-operation (or at least consultation) between the Judiciary and the authority actually making the appointment.

##### **CLAUSE III**

The principle of irremovability of the Judiciary, and their security of tenure until death or until a retiring age fixed by statute is reached, is an important safeguard of the Rule of Law. Although it is not impossible for a judge appointed for a fixed term to assert his independence, particularly if he is seeking re-appointment, he is subject to greater difficulties and pressure than a judge who enjoys security of tenure for his working life.

##### **CLAUSE IV**

The reconciliation of the principle of irremovability of the Judiciary with the possibility of removal in exceptional circumstances necessitates that the grounds for removal should be before a body of judicial character assuring at least the same safeguards to the judge as would be accorded to an accused person in a criminal trial.

##### **CLAUSE V**

The considerations set out in the preceding paragraph should apply to: (1) the ordinary civil and criminal Courts; (2) administrative Courts or constitutional Courts, not being subordinate to the ordinary Courts. The members of administrative tribunals, whether professional lawyers or laymen, as well as laymen exercising other judicial functions (juries, assessors, Justices of the Peace, etc.) should only be appointed and removable in accordance with the spirit of these considerations, in so far as they are applicable to their particular positions. All such persons have in any event the same duty of independence in the performance of their judicial function.

#### **CLAUSE VI**

It must be recognized that the Legislative has responsibility for fixing the general framework and laying down the principles of organization of judicial business and that, subject to the limitations on delegations of legislative power which have been dealt with elsewhere, it may delegate part of this responsibility to the Executive. However, the exercise of such responsibility by the Legislative including any delegation to the Executive should not be employed as an indirect method of violating the independence of the Judiciary in the exercise of its judicial functions.

#### **CLAUSE VII**

It is essential to the maintenance of the Rule of Law that there should be an organized legal profession free to manage its own affairs. But it is recognized that there may be general supervision by the Courts and that there may be regulations governing the admission to and pursuit of the legal profession.

#### **CLAUSE VIII**

Subject to his professional obligation to accept assignments in appropriate circumstances, the lawyer should be free to accept any case which is offered to him.

#### **CLAUSE IX**

While there is some difference of emphasis between various countries as to the extent to which a lawyer may be under a duty to accept a case it is conceived that:

(1) Wherever a man's life, liberty, property or reputation are at stake he should be free to obtain legal advice and representation; if this principle is to become effective, it follows that lawyers must be prepared frequently to defend persons associated with unpopular causes and minority views with which they themselves may be entirely out of sympathy;

(2) once a lawyer has accepted a brief he should not relinquish it to the detriment of his client without good and sufficient cause;

(3) it is the duty of a lawyer which he should be able to discharge without fear of consequences to press upon the Court any argument of law or of fact which he may think proper for the due presentation of the case by him.

#### **CLAUSE X**

Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is, therefore, essential to provide adequate legal advice and representation to all those, threatened as to their life, liberty, property or reputation who are not able to pay for it. This may be carried out in different ways and is on the whole at present more comprehensively observed in regard to criminal as opposed to civil cases. It is necessary, however, to assert the full implications of the principle, in particular in so far as "adequate" means legal advice or representation by lawyers of the requisite standing and experience. This is a question which cannot be altogether dissociated from the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best effort to ensure that adequate legal advice and representation are provided. An obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility.

**LIST OF PARTICIPANTS**  
**AFRICAN CONFERENCE ON THE RULE OF LAW**  
**LAGOS**  
**JANUARY 3-7, 1961**

D'ALMEIDA Benjamin (Dahomey)	Barrister-at-Law
AMORIN François (Togo)	Barrister-at-Law
D'ARBOUSSIER Gabriel (Senegal)	Minister of Justice, Republic of Senegal
ATABANI Ahmed M. (Sudan)	Advocate; former Attorney-General of the Sudan
BAHTA Gila Mikael (Ethiopia)	Advocate at the High Court
BECHGAARD Kai (Kenya)	Q.C.; former Crown Counsel and Attorney-General, Aden, 1946-50; Assistant Legal Secretary, East Africa High Commission, 1950-52
BENGALY M'Pé (Mali)	Judge; Secretary-General of the Council of Ministers, Government of Mali
BENTSI-ENCHILL Kwamena (Ghana)	Barrister-at-Law; former Secretary, Ghana Bar Association
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BOMANI Mark (Tanganyika)	Barrister-at-Law
BOSE Vivian (India)	President of the International Commission of Jurists; former Judge Supreme Court of India
BOWIE Robert R. (U.S.A.)	Professor, Harvard University
BURDEAU Georges (France)	Professor, Faculty of Law, University of Paris and the Institute of Political Studies
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- CHARLES Peter  
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- COOPER Daubeny Bartholomew  
(Liberia) Vice-President Emeritus of the Liberian National Bar Association
- CREPPY Georges  
(Ivory Coast) President of the *Court of First Instance*, Abidjan
- DANQUAH Joseph K. Boakye  
(Ghana) President of "Freedom and Justice", Ghana Section of the International Commission of Jurists; Barrister-at-Law
- DEBEVOISE Eli Whitney  
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- DE GRAFT JOHNSON E. V. C.  
(Ghana) Barrister-at-Law
- DEVLIN Sir Patrick A.  
(United Kingdom) Judge of the Court of Appeal
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- FEDERSPIEL Per T.  
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- FRANCK Thomas M.  
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- GARDINER Gerald A.  
(United Kingdom) Q.C.; former Chairman, General Council of the Bar of England and Wales, 1958-60; Member, Lord Chancellor's Law Reform Committee

GARDNER Brian Thomas (Northern Rhodesia)	Barrister-at-Law and Solicitor
GEORGE Peter Amos (Liberia)	Counsellor-at-Law
GIBSON John C. A. (Liberia)	Marshal, Supreme Court of Liberia; Aide-de-Camp to the Chief Justice
GREENFIELD Julian MacDonald (Southern Rhodesia)	Q.C.; Minister of Law, Federation of Rhodesia and Nyasaland
GUEYE Ogo (Senegal)	Barrister-at-Law
HASTIE William Henry (U.S.A.)	Judge, United States Court of Appeal for the Third Circuit; former Dean, Howard University School of Law; former Governor, Virgin Islands
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KANE Amadou (Mali)	Judge
KANGA Victor (Cameroun)	Minister of Justice, Cameroun Republic
KORSAH Sir Arku (Ghana)	Chief Justice of Ghana
KOZERA Edward S. (U.S.A.)	Administrative Secretary, International Commission of Jurists
KRÉHER Jean H. (France)	Advocate at the Court of Appeal of Paris; President of the Executive Committee of the World Federation of United Nations Associations
KUTUKLUI Noé (Togo)	Barrister-at-Law
LALIVE Jean-Flavien (Switzerland)	Secretary-General of the International Commission of Jurists; Member of the Geneva Bar
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MARSH Norman S. (United Kingdom)	Director, British Institute of Interna- tional and Comparative Law; former Secretary-General, International Com- mission of Jurists; former Fellow, University College, Oxford

M'BAYE Kéba (Senegal)	Judge, Supreme Court of the Senegal; former Senior Advisor to the Minister of Transport and Telecommunications
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MITCHLEY Hugh (Northern Rhodesia)	Barrister-at-Law and Solicitor
MONVILLE Edouard (Senegal)	Barrister-at-Law
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POUABOU Joseph (Congo-Brazzaville)	Judge
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RANNAT Mohamed Ahmed Abu (Sudan)	Chief Justice of the Sudan
RAZAFINTSAMBAINA Guy (Malagasy Republic)	Barrister-at-Law
ROLLAND Maurice P. H. (France)	Judge of the Court of Cassation; Pre- sident of the Association of the Euro- pean Jurists
SACRANIE A. Sattar (Nyasaland)	Barrister-at-Law
SANTOS A. Ignacio (Togo)	Barrister-at-Law
SHONIWA John Cyril (Southern Rhodesia)	Barrister-at-Law
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WARUHIU Samuel Njoroge (Kenya)	Barrister-at-Law; Lecturer in Law, The Royal Technical College of East Africa
WATTS Samuel S. (Liberia)	Magistrate; Secretary to the Chief Justice of Liberia
WILDE C. D. M. (United Kingdom)	Legal Officer, International Commission of Jurists
WILSON Anthony Dashword (Liberia)	Chief Justice, Supreme Court of Liberia
YAPOBI Lucien (Ivory Coast)	Barrister-at-Law

### **List of Participants, Nigeria**

ADEMOLA Sir Adetokunbo A.	Chief Justice of the Federation of Nigeria
ABAYOMI Sir Kofo	Medical practitioner
ADJAYI Dr. F. A.	Legal Draftsman, Ibadan
AJEGBO M. O.	Minister of Justice and Attorney-General, Eastern Region
AKINFOSILE Olu	Minister of Communications, Federation of Nigeria
ALEXANDER D. A. R.	Solicitor General, Western Nigeria
AMACHREE G. K. J.	Q.C.; Solicitor General, Federation of Nigeria
ARIKPO Okoi	Barrister-at-Law; former Minister
BAIRAMIAN Sir Vahe	Judge, Supreme Court of Nigeria
BENSON T. O. S.	Minister of Information, Federation of Nigeria
BOYO C. M.	Barrister-at-Law; Secretary-General, Benin Branch, Nigerian Bar Association
BRETT L.	Judge, Supreme Court of Nigeria
BURKE John E.	Barrister-at-Law
COKER G. B. A.	Judge, High Court of Lagos

DAFE Chief O. I.	Solicitor and Advocate, Supreme Court of Nigeria
DAVIES Chief H. O.	Q.C.; Barrister-at-Law
EKINEH Aliyi	Barrister-at-Law; Secretary of "Liberty", the Nigerian Section of the International Commission of Jurists
ELIAS Dr. T. O.	Attorney-General and Minister of Justice, Federation of Nigeria
FANI-KAYODE R. A.	Q.C.; Member of the House of Assembly, Western Nigeria
IGHODARO S. O.	Minister of Justice and Attorney-General, Western Region
IMPEY Gerald L.	Barrister-at-Law
LAWSON Chief A. O.	Barrister-at-Law
DE LESTANG Sir C. E. C. Nageon	Chief Justice, High Court of Lagos
MADARIKAN C.	Judge, High Court, Western Region
MAYAKI S. J.	Barrister-at-Law
MBANEFO Sir Louis N.	Chief Justice, High Court, Eastern Nigeria
MCEWEN F. S.	Chairman, Lagos Town Council; Barrister-at-Law
MOORE (Mrs.) Aduke	Barrister-at-Law
NJOKU Raymond A.	Minister of Transport and Aviation, Federation of Nigeria; Barrister-at-Law
NONYELU G. C.	Barrister-at-Law
NUNAN Manus	Acting Solicitor-General, Northern Region
OGUNBANJO C. O.	Barrister-at-Law; Treasurer of "Liberty", the Nigerian Section of the International Commission of Jurists
OKAFOR G. N. A.	General Secretary, Nigerian Bar Association
OKORODUDU Chief M. E. R.	Barrister-at-Law; former Nigerian representative to the United Kingdom
ONYEAMA C. D.	Judge, High Court of Lagos
ONYIUCHE G. C. M.	Q.C.; Director of Public Prosecutions, Eastern Nigeria
OSADEBAY Chief Dennis	President of the Senate, Federation of Nigeria



PREST Chief Arthur	Barrister-at-Law, Chairman of "Liberty", the Nigerian Section of the International Commission of Jurists; former Minister
QUASHIE-IDUN S.	Chief Justice, High Court, Western Nigeria
RAZAQ Abdul	Member of the House of Assembly, Northern Region; Barrister-at-Law
RICHARDSON S. S.	Commissioner for Native Courts, Northern Region
SMITH J. A.	Acting Chief Justice, High Court, Northern Nigeria
SOMOLU O.	Member of the Senate, Federation of Nigeria; Barrister-at-Law
TAYLOR J. I. C.	Judge, Supreme Court of Nigeria
UDOMA Dr. E. Udo	Vice-President of the Nigerian Bar Association; Barrister-at-Law; former Member of House of Representatives
UNSWORTH E. I. G.	Judge, Supreme Court of Nigeria
WILLIAMS Chief Ayo	Barrister-at-Law
WILLIAMS Fatayi	Judge, High Court, Western Region
WILLIAMS Chief F. R. A.	Q.C.; President of the Nigerian Bar Association; Barrister-at-Law

### **List of Observers**

#### *Organizations*

AMERICAN BAR ASSOCIATION	Charles S. Rhyne
COUNCIL OF EUROPE	Karel Vasak
FORD FOUNDATION	J. Donald Kingsley
INTERNATIONAL ASSOCIATION OF AFRICAN LAW	P. J. Idenburg Jean Poirier
INTERNATIONAL BAR ASSOCIATION	Laurence Lombard
INTERNATIONAL LABOUR OFFICE	Hasan Askari
INTERNATIONAL LAW ASSOCIATION	Thomas M. Franck
SCHOOL OF ORIENTAL AND AFRICAN STUDIES, UNIVERSITY OF LONDON	Antony Allott

UNITED NATIONS  
WORLD FEDERATION OF  
UNITED NATIONS  
ASSOCIATIONS

John D. Humphrey  
Babs Fafunwa

*Individuals*

ABITBOL Mrs. E.	Centre of College Education, Abidjan, Ivory Coast
ATTA William Ofori	Barrister-at-Law, Ghana
DOBRY George	Barrister-at-Law, United Kingdom
HARPER Fowler V.	Baldwin Professor of Law, Yale University, U.S.A.
HARVEY William B.	Professor of Law, University of Michigan, U.S.A.
LANG John	Director of Legal Education, Ghana
LARBI Koi	Barrister-at-Law, Ghana
MARSHALL Randolph	Research Fellow, Institute of Public Administration, New York
SCHWARTZ Louis B.	Professor of Law, University of Pennsylvania, U.S.A.

**List of Observers, Nigeria**

ADEGUNWA O., Ibadan	JINADU Y. A. O., Lagos
ADEMOLA A., Ibadan	LAMBO S. O., Lagos
ADEMOLA E. A., Ibadan	MACFARLAN A. I. P., Lagos
AIYEOLA O. A., Lagos	ODESINA A. A., Lagos
AJAYI G. O., Lagos	ODUJIMI (Miss) O., Lagos
AKINYEDE G. B. A., Lagos	OKUNNU F. O., Lagos
AKINYEDE L. O., Lagos	OMOLODUN J. O., Lagos
ALAKIJA O. O., Lagos	ONATUNDE O. Olajide, Lagos
ALLI-BALOGUN H. M., Lagos	OSENI M. O., Lagos
BELLO A. K. O., Lagos	OYERO A. A., Lagos
COKER F., Ibadan	SILVA Afolabi, Lagos
DAVIS S. E. E., Lagos	SOGBETUN S. O., Lagos
ELIAS G. Y., Lagos	SOLANKE V. A. A., Lagos
ESAN O., Lagos	SONUGA C. O., Lagos
FAKAYODE E. O., Ibadan	SOTUMINU J. M., Lagos
INYANG C. O., Lagos	SOWEMIMO S. A. S., Lagos
ISIKALU (Mrs) M. M. L., Lagos	

**Members of "Liberty",  
Nigerian Section of the International Commission of Jurists**

PREST Chief Arthur, Chairman	DESALU A.
OGUNBANJO Christopher O., Treasurer	FAWAHNIMI R. O.
EKINEH Aliyi, General Secretary	GIWA F.
ONYIUKE G. C. M., Q.C.*	IKPEAZU Chuba
RAZAQ The Hon. Abdul *	MAYANJU A. K. I.
IMPEY Gerald *	MOLAJO E. A.
ABUDU S. O.	NONYELU G. C.
AKINRELE F. O.	ODESANYA M. A.
BASSEY J. M.	OKAFOR G. N. A.
BOYO G. M.	ONOLAJA I. A.
COLE J. A.	SHONUKAN C. O.
DAVIS S. E. E.	SIKUADE A. O.
	SOLANA M. G. O.

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\* Members, Executive Committee.

# PROGRAMME

## MONDAY, January 2

- 10.00-20.00 Registration, Federal Palace Hotel
- 19.00-20.30 Informal Reception given by the International Commission of Jurists, Residents' Lounge, Federal Palace Hotel

## TUESDAY, January 3

- 09.00-12.00 Registration, Conference Secretariat, Senate Building
- 09.00-10.30 Opening Plenary Session, "National Hall"  
Welcome Address by Sir Adetokunbo A. Ademola, Chief Justice of the Federation of Nigeria, Chairman of the Committee of Honour
- Inaugural Address by Alhaji Sir Abubakar Tafawa Balewa, K.B.E., LL.D., Prime Minister of Nigeria
- Speech welcoming guests to the Conference by Chief Arthur Prest, Chairman of "Liberty", Nigerian Section of the International Commission of Jurists
- Speech by Dr. John D. Humphrey, Representative of the Secretary-General of the United Nations
- Speech by Sir Kofo Abayomi on behalf of the non-legal community of Nigeria
- Speech by The Hon. Vivian Bose, President of the International Commission of Jurists
- Vote of thanks by Sir Nageon de Lestang, Chief Justice of the High Court of Lagos
- 10.30-11.00 Adjournment
- 11.00-12.00 Plenary Session, "National Hall"  
Introduction to the working paper for the African Conference on the Rule of Law by the General Rapporteur of the Conference, The Hon. Dr. T. O. Elias, Attorney-General and Minister of Justice of the Federation of Nigeria
- 15.00-18.00 Committee Meetings
- 19.30 Reception by Sir Adetokunbo A. Ademola, Chief Justice of the Federation of Nigeria, at his residence, Ikoyi

**WEDNESDAY, January 4**

09.00-12.00 Committee Meetings

15.00-18.00 Committee Meetings

20.30 Dinner given by the Committee of Honour, Mainland Hotel

**THURSDAY, January 5**

09.00-12.00 Committee Meetings

Afternoon Free

19.00 Reception by the Nigerian Bar Association

**FRIDAY, January 6**

09.00-12.00 Plenary Session, "National Hall"

15.00-18.00 Plenary Session, "National Hall"

19.00 Reception given by His Excellency the Governor-General of Nigeria, the Hon. Dr. Nnamdi Azikiwe, P.C.

21.00 Conference Ball

**SATURDAY, January 7**

09.00-12.00 Plenary Session, "National Hall"

20.30 Closing Dinner given by the International Commission of Jurists, Federal Palace Hotel; Guest of Honour, His Excellency the Governor-General of the Federation of Nigeria, The Hon. Dr. Nnamdi Azikiwe, P.C.

**II**

**WORKING PAPERS OF THE  
CONFERENCE**

*[Preliminary note. Several months prior to the convocation of the African Conference on the Rule of Law at Lagos the Secretariat of the International Commission of Jurists prepared a Draft Outline for the National Reports of each of the three Committees. The Draft Outline was sent to all those invited to participate in the Conference with a request that they prepare a report on the legal systems of their respective countries in connection with each one of the points contained in the Draft Outline. The text of the Draft Outline is set forth immediately below.]*

## **DRAFT OUTLINE FOR THE NATIONAL REPORTS FOR THE AFRICAN CONFERENCE ON THE RULE OF LAW**

### **COMMITTEE I**

#### **Human Rights and Government Security – the Legislature, Executive and Judiciary**

1. (a) The extent, if any, to which any organ of the Executive has power to make rules or regulations having legal effect without express constitutional or legislative authority.

(b) The availability of, and grounds for, judicial review of such laws.

2. (a) Restrictions in the Constitution on the power of the Legislature to delegate legislative functions to any executive organ.

(b) If there are no such constitutional restrictions, a survey of legal provisions or rules of practice, if any, which restrict the competence of the Legislature in this respect.

3. The authority deciding whether a state of public emergency exists.

4. The availability of judicial investigation and determination, in any ordinary or special court, whether a state of public emergency exists.

5. (a) Whether the Executive or any organ of the Executive has autonomous power to legislate in a time of public emergency.

(b) If so, whether there are any constitutional or other legal restrictions on this power.

(c) The possibility of judicial review of such laws.

## COMMITTEE II

### Human Rights and Aspects of Criminal and Administrative Law

1. The extent to which the following activities of the Executive are subject to review in the courts:

- (a) restraint imposed on freedom of assembly;
- (b) deprivation of liberties under licence or other form of permission to carry on any lawful calling;
- (c) refusal under licencing control to permit the pursuit of any lawful calling;
- (d) deprivation of citizenship;
- (e) deportation of aliens;
- (f) restraints imposed by seizure or ban on freedom of literary expression;
- (g) acts interfering with freedom to travel within or outside the country;
- (h) compulsory acquisition of privately-owned property without adequate compensation;
- (i) interference with any rights guaranteed by the Constitution.

2. What, if any, are the circumstances in which it is possible for a person to be deprived of his liberty on grounds of public security other than on a charge of a specific criminal offence.

3. (a) If there are such circumstances, what is in this context the interpretation of "public security" by the authorities.

(b) Whether public security in this context is defined by law.

(c) Whether it is interpreted by the courts by means of review or otherwise.

(d) Whether detention of this kind is consequent upon judicial trial or whether there can be an appeal to a judicial authority.

4. The right to bail:

(a) The extent and limitations of the right to apply for bail;

(b) The authority (authorities) empowered to grant or refuse bail;

(c) Constitutional or other legal requirements governing the reasonableness of bail and the criteria by which such reasonableness is determined.

(d) Provisions, if any, for appeal against the refusal of bail.



## **COMMITTEE III**

### **The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society**

1. Existing legal provisions or established practice safeguarding the independence of the Judiciary in matters of:

- (a) appointments of Judges;
- (b) tenure, with particular regard to possible interference by the Legislature and/or Executive;
- (c) dismissal.

2. The authority competent to fix the general structure of courts and the organization of judicial business.

3. Whether rules of the Constitution, statutes or rules of practice ensure that legislative power shall not be exercised to affect the course of a pending or impending case in the courts.

4. (a) The extent to which the legal profession as an organized body is free to manage its own affairs.

(b) Other bodies which exercise or share supervisory powers over the legal profession and the effect of such interference on the independence of the Bar.

5. The guarantees of equal access to law:

(a) The availability in principle of legal advice and if necessary legal representation irrespective of means in connection with criminal and civil causes.

(b) If such possibility exists, what restrictions if any are imposed on the right to free or financially-assisted legal advice or representation.

(c) To what extent are members of the legal profession prepared to offer their services without fee or at a lower fee in cases where life, liberty, property or reputation are at stake.

(d) If there is a scheme of free and assisted legal aid or advice in operation, are the participating lawyers of the requisite standing and experience ?

6. The general standing of the Judiciary and of the Bar in the community and their out of court assistance to the Legislature and Executive in upholding and strengthening the Rule of Law.

# LIST OF NATIONAL REPORTS

## SUBMITTED TO THE AFRICAN CONFERENCE

### ON THE

### RULE OF LAW

#### COMMITTEE I

Canada:	T. M. FRANCK
Congo (Brazzaville):	J. POUABOU
France:	G. BURDEAU
Ivory Coast:	E. R. M. CARLTON, Y. COULIBALI and L. YAPOBI
Kenya:	S. N. WARUHIU
Liberia:	P. A. GEORGE
Malagasy Republic:	R. RAKOTOBÉ, A. RAZAFIMAHEFA and G. RAZAFINTSAMBAINA
Mali:	M. BENGALY
Northern Rhodesia:	B. T. GARDNER
Southern Rhodesia:	J. M. GREENFIELD
Tanganyika:	J. S. R. COLE
Uganda:	D. S. BAKKABULINDI

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Ethiopia:	M. B. AB HABTE SELLASIE
France:	M. ROLAND
Ghana:	E. V. C. DE GRAFT JOHNSON
Ivory Coast:	E. R. M. CARLTON, Y. COULIBALI and L. YAPOBI
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Mali:	M. BENGALI
Togoland:	A. I. SANTOS
Uganda:	G. S. K. IBINGIRA
United Kingdom:	N. S. MARSH

### COMMITTEE III

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Mali:	M. BENGALY
Northern Rhodesia:	A. O. R. MITCHLEY
Senegal:	E. MONVILLE
Sierra Leone:	S. C. BERTHAN-MACAULEY
South Africa:	I. A. MAISELS
Uganda:	R. W. CANNON and J. W. KAZZORA

# GENERAL REPORT

by

Dr. T. O. ELIAS

*Attorney-General and Minister of Justice,  
Federation of Nigeria*

The general theme of this Conference is, as you all know, "Government Action, State Security and Human Rights". It has, however, been broken down into the three specific sub-headings of (A) Human Rights and Government Security – the Legislature, Executive and Judiciary, (B) Human Rights and Aspects of Criminal and Administrative Law, and (C) The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society. Each of these large subjects is in the charge of a Committee, and conference participants are free to choose any of the three Committees for the purpose of detailed study and discussion. It is probably unnecessary to emphasize that the three sub-divisions are really complementary aspects of the perennial problem of the maintenance of the Rule of Law as re-defined and popularized at the famous Delhi Congress of the International Commission of Jurists held in the Indian capital last January. There is therefore bound to be a certain amount of overlapping between the three groups of subjects and even within each group, as is evident from the questionnaires previously circulated to the participants by the Commission as guides to detailed study.

It will be convenient now to take each subject separately.

## **(A) HUMAN RIGHTS AND GOVERNMENT SECURITY – THE LEGISLATURE, EXECUTIVE AND JUDICIARY**

We are here confronted at once with the age-old problem of all known systems of jurisprudence – the individual *versus* the State. The issue is how to reconcile the democratic idea of the personal liberty of the subject with the need for the preservation of the State and the continuance of civilization. Two major attitudes have in the course of the centuries become established. There is the harsh political philosophy of those who wittingly or unwittingly regard the State as more important than the individual, that which should be emphasized is the Duty rather than the Right of the citizen. The other type of political philosophy – that of liberal

democracy – asserts that the individual does not exist merely to serve the ends of the State, that the correct emphasis is on the Right rather than on Duty. But, even within either of these two main groups, there are divergencies. The emphasis on Duty rather than Right does not necessarily make a jurist a totalitarian philosopher. Thus John Austin, Hans Kelsen and Léon Duguit, while differing in many respects, place the emphasis on Duty and share the common disdain for “natural law” thinkers like Grotius, Rousseau, and Thomas Paine who make so much of “the inalienable, imprescriptible rights of man”. Yet the positivist, analytical school of philosophers are probably the foremost of modern democrats in the best sense of the word. They teach the lesson of obedience to duly constituted authority as the best means of realizing social existence on this planet; that is, in the vivid phrase of Duguit, *règle de droit* – the principle of “social solidarity”, which is the principle of political action requiring active participation and co-operation between the governors and the governed for the greater good of the whole community. Undue glorification of human rights tends to make the individual lose his sense of social obligation towards his fellow men, and this may sometimes result in his stepping on the toes of others when his guiding principle should be, in Immanuel Kant’s own words: “Act in such a way that the principle of your action shall be a principle of universal action”. It is the task of law in an ideal State to regulate and attempt to reconcile the conflicting claims of one individual against those of the rest. This has provoked Kant’s definition of law as “the sum of the conditions under which the will of one man can be reconciled with the wills of others under a general, inclusive law of freedom”.

Thus the apparently irreconcilable antinomy between the individual and the State becomes the subject of legal regulation. This control, this resolution of conflicting interests within the State, may be attempted in the form of legislation or of executive action, while each in its turn may be subjected to judicial scrutiny. The real difficulty is to discover when and where to draw the line that divides the individual’s legitimate interests from those of the State.

In law, as in politics, this delicate opposition of the individual to the State is as crucial as the nice balancing of the need for change with the need for stability of the social order. Rash experiments in the calculation of the changes of the one at the expense of the other could very often lead to chaos. There are no immutable laws by which we can ascertain the right proportion of the desired change and the maintenance of the existing fabric of society. Political philosophy has set the modern State two main tasks: (i) the resolution of internal conflicts and (ii) the defence of the community against external aggression. Internal disturbances arising from riots as well as a state of war could quite conceivably justify the proclamation of an emergency and the promotion of measures which might seriously derogate from the fundamental liberties of

the subject. External aggression upon a State certainly justifies an even more drastic curtailment of elementary human rights in the interest of State security.

It is, therefore, agreed on all hands that emergency laws are inevitable in circumstances such as these. Indeed, all governments of whatever political or ideological complexion have need of them sometimes. Thus, the British Regulation 18B during the Second World War empowered the Home Secretary in the United Kingdom to detain indefinitely any alien without trial for as long as the war lasted. Even before the war began, civil commotion in both Britain and France had provoked the Public Order Acts in the same year, 1936, and these in effect forbade all public processions and the wearing of military or quasi-military uniforms. Other instances could be given of the use of legislative or executive measures to deal with genuine situations of emergency.

The danger arises, however, when the citizenry, whether by legislative or executive action or abuse of the judicial process, are made to live as if in a perpetual state of emergency. This is the fundamental difference between totalitarian regimes like Hitlerite Germany or Franco Spain and the liberal democracies of the Western world. In the latter, there is an anxious concern on the part of everyone for a return to normal once the temporary emergency is removed. In the former, the individual becomes ruthlessly subordinated to the over-riding claims of the Nationalist Socialist State, a mere cipher without rights but only duties. The State becomes an end in itself and is regarded as the mere summation of the individuals within it. The Party machine grinds down all opposition; to belong to the oligarchy is to ensure for oneself a position of privilege and ascendancy. In his address to the Philosophical Society of Edinburgh in the dark days of 1936, Lord Wright, then a Lord of Appeal in Ordinary, said:

"The civilized nations have abolished slavery in the economic sense, but the world now presents the appalling spectacle of a new slavery, the slavery of the spirit. Freedom to think and to believe and to say what we deem right, subject only to the recognition of the same freedom on the part of others, that is the charter of liberty which our ancestors won for us, not without dust and tears. The same liberty we now see threatened by a new tyranny which seeks to reduce the citizen to a soulless machine, to moral and intellectual servitude. It is a subtle process; it takes many guises and disguises; it even invokes high-sounding names. But whether it takes the form of the dictatorship of the despot or of the ruthless domination of one section of the community over the others, it is the sworn foe of justice."

And yet, it is precisely to prevent the State from imposing the juggernaut on sections of the community for the benefit of a ruling few that the concept of the Rule of Law has been pressed so much and so often into the service of moral philosophy and of political democracy.

Emergencies can be real or they can be conjured up to bolster the use of naked force. Preventive detention may be necessary in conditions of anarchy and violent sectionalism within a State at certain times but it could all too easily degenerate into instruments of tyranny and oppression if continued beyond the contingency that called it forth in the first place. In times of peace, legislative or executive action likely to impair individual rights is normally avoided in the truly democratic State. Under its Suppression of Communism Acts, South Africa has thrown hundreds into jail whose only crime was to have protested against the pass-laws and other forms of racial discrimination. The infamous treason trials, to which the International Commission of Jurists sent lawyers to observe and assist with the defence of the unfortunate victims, affords an unparalleled example of the prostitution of the judicial process in recent times. Charges were trumped up and procedural devices were used in a manner that betrays the utter contempt in which the Nationalist Government of South Africa holds the Rule of Law. The only thing that has equalled this exercise on their part was when, in order to remove the coloured voters from the roll of electors and thus to expunge the entrenched sections 151 and 152 from the Union Act of 1909, they "packed" the Senate with nominees to enable them to secure the necessary two-thirds majority in the Legislature. Now, all these and more have been done in the name of Government security and the preservation of law and order within the South African State. To crown it all, three out of the fifteen million people of that unhappy country even more recently decided on their own to establish a republic for all, including the silenced twelve million. This is the direct negation of the Rule of Law in any language including, I should imagine, even Afrikaans.

So far, we have assumed that there are certain human rights and fundamental freedoms which it is the business of every democratic State to guarantee to its citizens as well as to the law-abiding aliens within its territory. These rights and freedoms are sometimes unwritten, as in the case of the British Constitution, which is not to be found in any code; they are more often contained in modern written constitutions, both of the continental type and of the Dominions of the Commonwealth variety. It is a common feature of British colonies until their achievement of independence that they normally do not have a set of written fundamental liberties. We may say that in them the aim is not so much to entrench human rights in codes as to restrain their infringement by law. The concept and application of the Rule of Law largely make express legislative provisions for them unnecessary by guaranteeing to all citizens equality before the law, freedom of access to the courts (although there is no provision for legal aid), freedom from arbitrary arrest, freedom of religion, freedom to enjoy property rights, freedom of assembly, and freedom of speech so long as that which is said or written is neither defamatory, nor seditious, nor obscene, nor

blasphemous. But the colonial governor who normally constitutes the sole executive has emergency and other powers to detain disturbers or would-be disturbers of the public peace, subject to an eventual review by the British Secretary of State for the Colonies.

Now, there have been two post-independence developments in British and ex-British territories in Africa. The first has been the introduction of written constitutions with detailed provisions for fundamental human rights: Nigeria is the notable example here, no doubt on account of the diversity of its ethnic groups and the desire of minorities to be safeguarded against possible infractions of their rights by the majority governments in each region. Since the Nigerian Federal Constitution was hammered out by the Nigerian delegates to the London Conference in 1958, its fundamental rights provisions have been expressly adopted and adapted by Kenya, Uganda, Tanganyika, Nyasaland, Sierra Leone and the British West Indies Federation as guide-posts to legislative action on the attainment of independence. With the details of the Nigerian provisions I need not detain you here, as most of you may have read my article on the subject in the *Journal of the International Commission of Jurists*, Vol. II, No. 2. Outside the British sphere, Liberia has a set of human rights written into its constitution on the American model, with a dash of the original Magna Charta.

The second development concerns the great debate as to whether the newly independent African States and those about to follow them must pass through a period of political absolutism now as a condition of achieving liberal democracy at some future date when all the fissiparous tendencies of tribalism shall have disappeared. The protagonists of this view point for examples to Bismarck in Germany and Garibaldi in Italy in the last quarter of the 19th Century. There is something to be said for the case against the all too frequent phenomenon of sectional self-assertiveness among the polyethnic communities in the countries of Africa and Asia today. Where some of us are in doubt is the extent to which highly restrictive measures may legitimately be taken to repress incipient revolt or resentment that is animated by sentiments of separate group identities. The need for Government security might, if pursued in too single-minded a manner, lead to a situation where personal liberty could be overlooked or even jettisoned.

Before concluding this aspect of our study, it is relevant to add one important observation. It is that it is unrealistic to suppose that courts or tribunals could be entrusted with the extra-legal exercise of determining when an emergency arises in a given country sufficient to warrant the use of restrictive government measures for the purpose of maintaining law and order. In nearly all countries, West as well as East of the iron curtain, the Government of the day, that is to say the Governor-General or the President or the Monarch and his Executive have the ultimate responsibility for making a proclamation or decree that a state of public emergency



exists at any given moment. The democratic but slow processes of the court would certainly be inappropriate in a situation in which the lawfully constituted authority of the State is threatened with subversion or grave civil disorder. However, there is in all genuinely democratic States a legislative provision for the submission of the emergency proclamation by the Executive to the Legislature for discussion and ratification or abrogation of the decree in question. Liberia, for example, claims that this is the constitutional principle followed within its own borders. But Nigeria's independence Constitution gives (in section 65) the power to declare a state of emergency to parliament where a majority vote of not less than two thirds must approve the intended declaration of emergency. It would be clearly unreasonable to require that a decision reached in this way should be further subjected to a judicial review.

## **(B) HUMAN RIGHTS AND ASPECTS OF CRIMINAL AND ADMINISTRATIVE LAW**

According to the questionnaire circulated to participants by the Commission, four matters are mentioned in particular. These are:

(a) the judicial review, if any, of executive action restricting or tending to restrict freedom of assembly, freedom of association, right of citizenship, right of residence and of alienage, freedom of speech, freedom of movement, and the right to compensation for acquisition of private property; and, as a necessary corollary, which on infringement of such rights when written into and guaranteed in a country's constitution, can be subjected to judicial review;

(b) in the absence of a charge of specific criminal offence, in what defined circumstances the Executive can deprive a person of this liberty on grounds of public security;

(c) if those circumstances are expressly stated in a country's laws, what constitutes "public security" who determines its precise meaning, whether any detention order made in the name of "public security" is made after a court trial or is open to judicial review;

(d) the right of an accused person to be granted bail and by what authority or authorities, the consequences of a wrongful refusal to grant bail and the accused person's remedies in such a case.

With regard to (a), the position in English law is that a restriction of any of these human rights and fundamental freedoms is in normal times subject to judicial review. Indeed, it may be said that the courts have been their chief regulators and custodians. But in times of war or grave public emergency, the enjoyment of most of these rights is, as we have seen, curtailed or even taken away. But in the leading case of *Attorney-General v. De Keyser's Royal Hotel*, it was held that, while the exigencies of the First World War

justified the billeting of soldiers in the private house of a citizen, they did not absolve the Crown from the liability for reasonable compensation to its owner for the loss suffered thereby.

An aggrieved person may sue the Writ of Habeas Corpus for an unlawful detention or imprisonment, or a *certiorari* for a biased, corrupt, or perverse judgment of an inferior tribunal, or a *mandamus* to compel a subordinate authority to do his judicial or administrative duties touching the legal rights of the citizen, or a *prohibition* to forbid a subordinate authority or judge to proceed with a contemplated course of action which might affect the citizen's legal rights. He may also ask for a *declaratory judgment* on a disputed or ambiguous point of statutory interpretation affecting his legal rights.

All these remedies are available to the inhabitants of a British colony or even a protectorate, as the recent case of *Ex parte Mwanja* (1960) shows. There, the indigenous inhabitant of the Protectorate of Northern Rhodesia had his freedom of movement restricted to an area by the Order of a District Commissioner on the ground of "public security", the accused being a somewhat articulate politician. The High Court of the territory held that the order was valid, that the accused as a British protected person could not sue a Writ of Habeas Corpus, and that, in any case, he could sue only in the local court. It was, however, held by the High Court in England, to which Mwanja had in the meantime applied for the Writ, that the Queen's jurisdiction extends to all her realms and territories beyond the seas and that, the Habeas Corpus being a Prerogative Writ, any of Her Majesty's subjects and others owing Her due allegiance has a right to sue the writ in any of Her Majesty's courts in any of Her realms. We need not go into detailed discussions here of more cases on this very important subject. But it is legitimate to recall here in passing the famous judgment of Lord Mansfield in *Sommersett v. Stuart* (1772), a Writ of Habeas Corpus in which a coloured Jamaican slave who had been brought to England by his English master was declared to be a freeman on his setting foot on British soil. This case started the agitation in England that led to the abolition of the slave trade in 1807 and of slavery in 1833.

But, though these remedies are as available in the British dependencies as they are in Britain, they are often subject to restrictions in the former, even in times of peace. We have referred to the colonial Governor's Emergency Powers under an Act of Parliament; some of the provisions empower the local Executive to detain citizens without trial, to deport aliens, to deprive a naturalized British subject of his citizenship, and to do a number of other things necessary to maintain law and order, despite the fact that many colonial Criminal Procedure Ordinances specifically provide for the right of a fair trial in these matters in ordinary circumstances. Ghana often claims in self-defence that her Preventive Detention and the Deportation Acts are largely hangovers from British colonial administration. The British can probably retort that in their day a

comparatively small ruling group had need of such measures in governing Africa's and Asia's teeming millions. This might no doubt be alleged in favour of the often tight laws on seditious or criminal libel, or those banning certain associations as illegal, or those governing the opening and the running of newspapers. These were generally stricter than their equivalents in the United Kingdom. It is an interesting commentary, however, that the ex-British and the ex-French colonies have yet to show a softening of these laws; they have, rather significantly, made some of them even tougher. Perhaps the problem lies partly in the nature of the case.

We may now turn briefly to (b) and (c) – i.e. the circumstances in which the Executive can properly declare that public security demands the detention of a particular individual or a group of individuals, and the authority that decides when these circumstances exist. Usually, a state of war or the proclamation by the Governor or (as in the case of Nigeria) by the Parliament that a public emergency has arisen would justify the taking of such preventive measures as are deemed necessary by the Executive to meet the situation. While a state of war is easy to discern, that of a public emergency is not. The expression “public security” is so infinitely various in its connotation that probably no two persons or governments can agree on a mutually acceptable meaning. This is as it should be, since “public security” is not a term of art or even a precise concept. The executive everywhere decides when such a state of crisis has arisen as may endanger what it regards as “public security”. And it is hardly likely that a judge would be ideally equipped to delimit the precise sphere of public security – an entirely meta-legal operation. One must hope that an abiding faith in the Rule of Law and loyal respect for democratic government should so characterize the leaders of a nation charged with this delicate responsibility that they would not lightly resort to such extreme measures. No amount of pettyfogging definitions of terms like “public security” or “public emergency” could deter a military junta or an oligarchy.

On the question of bail, the position under English law which applies *mutatis mutandis* to the British and ex-British territories, may be stated briefly as follows.

Bail may be granted to an accused person either by the Police or by a Magistrate or by a High Court Judge, depending upon the circumstances of the crime and of the criminal. The accused person is required to enter into a recognizance on his own behalf and to provide sureties satisfactory to the authority granting bail that the accused would answer to his bail or his sureties might forfeit a stated sum to the court if the accused should abscond. But before bail is granted, four factors are taken into account: (i) the nature of the offence committed, (ii) the character and antecedents of the accused, (iii) the likelihood that the accused, if released, might repeat the

same offence or commit a similar one, (iv) that the accused might fail to surrender to his bail or might attempt to interfere with prosecution witnesses or otherwise abuse the processes of the court. Where an accused person has been unlawfully refused bail, or where excessive bail is being demanded contrary to the provisions of the Bill of Rights, 1689, the accused person can apply to a Judge of the High Court for a Writ of Habeas Corpus in order to secure his release from custody. The High Court has the power to impose a penalty upon the inferior authority who is found thus to have unlawfully refused bail. Of course, in certain exceptional cases, such as homicide or treason, an accused person is ordinarily not entitled to bail. On the whole, it can be said that the law and practice regarding bail in the British areas of Africa are reasonably satisfactory.

### **(C) THE RESPONSIBILITY OF THE JUDICIARY AND OF THE BAR FOR THE PROTECTION OF THE RIGHTS OF THE INDIVIDUAL IN SOCIETY**

The rules of law initiated by the Executive or even by private individuals and enacted by the Legislature may be good in themselves, but their proper application requires judicial scrutiny and surveillance. In this process advocates and conveyancers have a proper part to play in helping to define and amplify the issues involved. As I said at the beginning of this paper, the proper task of the law is to resolve the perennial conflicts in society between man and man, between the individual and the State, between group interests and community well-being.

The role of the judge in all this must, in the nature of things, vary from State to State. In countries with so-called unwritten constitutions, judges play a less spectacular role than in those with written constitutions. All the known federal systems have written constitutions, and the traditional pattern of human society has always been either monarchical or republican in character. The judge's functions under an unwritten, flexible and unitary constitution are to interpret the laws made by the Legislature, not to criticize or invalidate them. Such is the force of the principle of sovereign omnipotence of Parliament, as in the United Kingdom. On the other hand, under a written, rigid and federal constitution, the position of the Supreme Court judge is enormously enhanced in that it is he who is the final arbiter in all constitutional and legal disputes that come before the courts for adjudication. Indeed, in the United States of America, the Supreme Court judges have the competence to declare certain acts of the Government as unconstitutional and certain provisions of congressional statutes as absolutely void. After a period of vacillation, the courageous stand of this Court in the last few years against the discriminatory racial laws in cer-

tain States has won the admiration of all free men and women throughout the world.

It will be remembered that Dicey, in his enunciation of the third characteristic of his concept of the Rule of Law in the British Constitution, was at great pains to emphasize that in the United Kingdom the rights and liberties of the subject are not embodied in codes but are the results of judicial findings and pronouncements laid down from time to time in the ordinary courts of the land. In support of this one recalls such obvious *causes célèbres* as *Sommersett v. Stuart* and *Attorney-General v. De Keyser's Royal Hotel* to both of which we have referred, *Local Government Board v. Arlidge* in which were laid down the principles of human rights and the powers of the Administration to restrict some of them only if the requirements of natural justice and fair-play are not infringed by the courts or by administrative tribunals, *Liversidge v. Anderson* which defines the legal relations between the personal liberty of the subject and the needs of government security, and *Anderson v. Gorrie* in which *inter alia* the independence of the Judiciary was held to extend to things said or done in the course of a court trial so that judges should be free to administer justice freely and impartially. The list of such judicial decisions is as long as it is edifying; but we need not attempt to exhaust it here. With these and other cases must be associated the names of eminent judges like Lord Mansfield, Coke, Lord Nottingham and Lord Atkin of Great Britain, and Chief Justice Marshall, Oliver Wendell Holmes, Cardozo and Warren of the United States – to name but a few of those who have done honour to Anglo-American law. It would complete the picture to include here the names of some of the great judges of France, Switzerland, Holland and the Scandinavian countries, but the names and works of their eminent jurists are better known to you. Can this be fairly put down to the victory of *la doctrine* over *la jurisprudence*? But Francois Gene, in his *Méthode de l'Interprétation*, has set the judge a very creative task in the judicial process and it would be a surprise if he failed to perform it. The inquisitorial mode of continental trials alone ensures that.

The French Community (Communauté) now consists of two groups of States: (1) the sovereign ones, which are France itself, Mali, Senegal and the Malagasy Republic; and (2) the autonomous ones, which mean all the other French African countries. The autonomous States are allowed to frame their own constitutions, and these have adopted political systems on the French model: a strong presidential Executive and a Parliament with limited powers. The Legislature is unicameral, except in the Malagasy Republic (which is sovereign); Senegal and Mali, both sovereign, retain the unicameral legislative system. The executive power is vested in one person who combines the functions of head of State with those of head of Government. With regard to the Judiciary, the position is that each Republic can set up new courts and define their composition and powers. But

Article 78 of the Constitution gives the Community wide powers of supervision (*contrôle de la justice*) over the courts of the constituent Republics, even to the extent that the Community can determine whether the judgments of the Overseas Territories are repugnant not only to the law of a particular Republic but also to the law of the Community, i.e., French law. Very different in many respects is the position of the fully sovereign States of Senegal, Mali and Malagasy *vis-à-vis* the French Community; these have a relationship to France similar to that existing now between the United Kingdom and the members of the Commonwealth. They have full treaty-making powers, and they also exclusively control their own judiciary. But they share with all the other States members of the French Community similar institutional arrangements in the legislative, the executive and the judicial spheres. This implies that they too have the *droit administratif*, which governs disputes between a citizen and an organ of the State in special courts, with an ultimate right of appeal to the *Cour de Cassation* – an arrangement which, as we have seen, does not obtain in the United Kingdom or her African colonies and ex-colonies.

Roscoe Pound, an American, who is probably the leading jurist in the world today, has likened the administration of justice to “social engineering”. For him, law is “social control through the systematic application of the forces of politically organized society”. This sociological approach to law is on the whole a fruitful one in that it throws the jurist, be he lawyer or judge, into the judicial melting-pot. No longer can he abdicate his functions to the legislator. He must be an active participant in the whole process of administration of the law. Even the worst interpretation of von Savigny’s theory of law as the common consciousness of the people so that the judges and lawyers are mere specialized exponents of it, could no longer regard the modern judge and lawyer as mere conduit pipes in the structure of social engineering. Without necessarily mixing our metaphors, we may say that theirs is now the role of catalytic agents in the chemical reaction.

Thus, the lawyer is not just a professional advocate skilled in detecting flaws in the enacted laws and intent on having his client set free on some technicality. In British and American practice, the legal practitioner is an officer of the court, enrolled as such to assist in the administration of justice according to law. His main concern is the achievement of impartial justice so far as is humanly possible in the light of the known facts as tested against established legal principles. In England, the General Council of the Bar and the four Inns of Court in the case of barristers and the Law Society in the case of solicitors, and in the British dependencies the various Disciplinary Committees under the chairmanship of the Attorneys-General, exercise general discipline over members of the Bar, including suspension and disbarring of those found guilty of serious unprofessional conduct in the practice of the

law. The procedure is normally to summon the accused advocate before the Committee to appear either in person or through another counsel and to show cause why he should not be disciplined for proved misconduct. On every such Disciplinary Committee sit representatives of the local Bar Association, an autonomous and independent body of practising lawyers. In Ghana and Nigeria, local independent Bar Councils on the British model have been established and new legislation already passed or about to be passed to regulate the conduct of legal practitioners as well as to re-arrange certain aspects of the legal profession in consequence of political independence and the new schools of law. In both territories lawyers will soon cease to go to the United Kingdom for their training. The existing arrangement shows that lawyers are therefore reasonably well organized for the performance of their task. But, throughout British Africa and most of South-East Asia, there is no developed system of legal aid for indigent litigants. There is only a long-established practice whereby any practitioner in court can undertake the defence of an accused person by offering to hold what is called a "dock brief" for only 23/6 d. (twenty-three shillings and sixpence). There have been a few instances where lawyers performed professional services to needy litigants without taking any fee.

Until the beginning of the Second World War colonial judges were normally recruited by the Colonial Office in London into the Colonial (now the Overseas) Legal Service. As such, they were civil servants, who were regularly reported upon by the Chief Justices of their respective colonies to the local Governors who would in turn report to the Secretary of State for the Colonies in the United Kingdom. As the recent case of *Terrell v. Secretary of State for the Colonies* (1953) reminds us, all colonial judges hold their offices, not *quamdiu se bene gesserint* (that is, during good behaviour) as is the case of English High Court and superior judges, but during Her Majesty's pleasure. In theory, therefore, they are dismissible by the employing authority – the Secretary of State for the Colonies; in practice, however, they have the right of ultimate appeal to the Privy Council if their services are terminated on the ground of proved misconduct or of infirmity of body or mind. While Ghana now takes care of her judges all but a few of whom are Ghanaians, Nigeria has retained the system of appeal in a provision of its independence constitution. All the other British territories in Africa and Asia still follow the old system.

But since British West Africa began to recruit High Court judges from local talents at the Bar some dozen years or so ago, local Judicial Service Commissions have been established for the appointment and promotion of judges. The aim has been to secure for the commissioners a high degree of independence and freedom from political or personal influence. The Chief Justice usually acts as chairman. The arrangement is possibly as good as could be

desired in the prevailing circumstances of these territories. There is as yet no African High Court judge in any other area of British Africa.

The legal profession in British West Africa is now some one hundred and twenty-eight years old, and it is probably the oldest in Africa north of the Limpopo River. Of the pre-European judicial process in Africa I have treated in my "Nature of African Customary Law."<sup>1</sup> It is perhaps not irrelevant to remind ourselves of the African ideas of law and justice before the European advent. What we now popularly refer to as the Rule of Law is the same as what European sociologists have described as the African principle of maintenance of the social equilibrium. It is the idea that neither the community as represented in the person of the chief or of the council of elders nor the individual should be allowed to upset the established regularities and proprieties by which the social machinery is kept in orderly and continuous motion. And there have always been courts to ensure that. As Dr. R. H. Lowie, an American sociologist, once observed: "Among the negroes of Africa primitive jurisprudence attains its highest development. In precision and scope their code rivals that of the Ifugao, but unlike the Ifugao the Negroes have almost everywhere an orderly method of procedure before a constituted tribunal. They display a remarkable taste for judicial casuistry and a keen enjoyment of forensic eloquence".<sup>2</sup>

But it is with the modern legal systems of Africa and other parts of the world that we are now concerned. There can be no doubt that this is a most opportune time to survey the legal and constitutional problems of the newly emergent States of Africa against the background of the Rule of Law. In modern times the British were the first to give political independence to their colonies in Africa in 1957 when the Gold Coast became Ghana. The French followed suit, with Guinea leaving the Community in 1958: other French territories have since won free in varying degrees. If the collapse of the French policy of assimilation has come sooner than expected, the Belgian experiment in the Congo has been so sad precisely because little foundation had been laid there for the Rule of Law before the transfer of power into Congolese hands. Spanish and Portuguese Africa remain outside the fold of constitutional democracies, as the citizens know no rights and personal liberty as commonly denoted by the concept of the Rule of Law.

This Conference will through the work of its three Committees enable the learned participants to subject my general survey to closer examination in the light of their particular experience of individual territories. The delegates from French territories have a special contribution to make in this regard, since accurate and helpful data are in their case usually hard to obtain.

<sup>1</sup> Published by Manchester University Press in 1956, and which is now available in French from *Présence Africaine*, 42, Rue Descartes, Paris Ve.

<sup>2</sup> Cf. *op. cit.*, p. 30 *et seq.*



By focussing world attention on the current problems of law and administration in Africa and by thus stimulating thought among African jurists on their role in society, the International Commission of Jurists is making an important contribution to our development in the realm of ideas. Political emancipation is desirable, but willing respect for law and order is the corner-stone of democratic self-government. The poet is right in a sense when he wrote –

“For forms of government let fools contend,  
What ’er is best administered is best.”

But all will agree that forms of government are often as important as the art and practice of government. Our earlier analysis has shown the different attitudes towards human rights and fundamental freedoms which States adopt according to whether they are liberal democracies or dictatorships. Totalitarian regimes regard judges and lawyers purely as instruments of State policy and the courts as set up to justify the excesses of the Executive in the name of what has been called “revolutionary legality”. Judges and lawyers who fail to put loyalty to the Party in power above loyalty to the principle of the Rule of Law lose their position or practice soon enough.

But law is a civilizing as well as a stabilizing influence in human society, and the true jurists are some of the most unyielding defenders of its prerogatives. Though authoritarian power may try to silence the voice of the devotees of the Rule of Law, the lawyers’ and judges’ notes of protest can sometimes be heard above the din of hate and clash of values. Such indeed was the recent resignation of Sir Robert Tredgold from the post of Chief Justice of Southern Rhodesia on the ground of the racial laws of the Government of that territory; such again were the Judges who once told a former Nationalist Government of South Africa that it would be unconstitutional to remove the entrenched clauses established by Section 152 of the Union Act of 1909 except by the two-thirds majority laid down in the Constitution; or those who more recently resisted prosecution charges at the South African Treason Trials on the ground that some of the methods used often amounted to an abuse of the process of the court; such, finally, is the current exposure of the Franco regime by certain Spanish lawyers. As long as there are such courageous men and women of the law, so long will the reign of the Rule of Law retain its firm hold on the greater portion of the human race. And towards that achievement the International Commission of Jurists will by holding this Conference in the capital city of the Nigerian Federation have contributed not a little in the worthwhile effort to realize the ideal of social justice on the Continent of Africa.

# INTRODUCTORY REPORT TO THE FIRST COMMITTEE

**Human Rights and Government Security— the Legislature,  
Executive and Judiciary**

by

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## INTRODUCTION

It would be sheer presumption to attempt an exhaustive survey in an introductory report. The purpose of this report must necessarily determine its limits. Its aim is the more modest one of preparing for the study of exceedingly complex problems and national reports, and discussion of those reports will provide more detailed conclusions.

Does this mean that there is no immediate point in defining the frame-work of investigation and in laying down certain broad lines of action? The basic concepts followed in this report aim at a relative and open-minded approach that will facilitate assimilation of the lessons that will emerge from the work ahead.

Law has its affinities with ethics through its mental structure and its embodying principles, but it claims acknowledgment as a science also. Produced by a people as a result of its history, it expresses a particular culture. In a way, culture is man's reaction to his environment, but law cannot be divorced from the environment, and more especially from the social and political environment. Thus, it is not surprising to note that African law bears the imprint of the nationalism of our era.

External influences and the desire to create an original structure constitute the distorting elements that leave an undoubted mark on modern African law.

The West has given us various ideas and institutions that we no longer dispute in any way and that we consider as our common property. Nevertheless, if we consider the whole of Africa, transcending the identical form of pre-colonial conditions, these ideas

and institutions give rise to emerging structures whose intrinsic value is guaranteed by their meeting local requirements.

Despite the urge expressed by Africans to produce original works in addition to what they must necessarily borrow, they must face up to the problem of the co-existence of individuals within an organized State, for which they must find a solution depending, in the final analysis, on the particular conditions of that State and on the imagination of its citizens.

Constitutional history teaches us that, between the supremacy of society as an entity over the individual and subordination of society itself to what are known as the basic freedoms, there are various possible alternatives running through a great many variations, in which a harmonious balance remains more theoretical than actual.

For the authors of the French Constitution of 1789, inspired by the conception of natural law proclaiming the inalienable nature of individual freedom, the organization of the State and its authority had to be made subject to the rights of the individual.

In the course of history, other doctrines have been expounded that have, on the contrary, subordinated the individual to society, the rights of the individual being safeguarded only through some form of self-imposed limitation of the State's power.

The development of the human mind and the extension of man's intellectual horizon have together led philosophers and jurists to consider the problem of freedom and the freedoms. The rights regarded as basic have become universal requirements. Thus, the African Constitutions, inspired in general by the Declaration of Human Rights, proclaim the inviolability of certain freedoms: freedom of religion, freedom of assembly, freedom of opinion, freedom of association, and so on.

But how are these acknowledged individual demands to be reconciled with those of the modern State? It does not seem that the problem can be settled by a mere affirmation of the principle of harmony of interests. The individual himself judges the manner in which his rights are exercised, the manner in which he enjoys these rights. The State, on the other hand, cannot directly appreciate how far its rights are enjoyed, since these are exercised by those called upon to govern, in fact by a category of persons generally wielding the delegated power of such appreciation. Those who govern are not insensitive to public opinion and their appreciation may be influenced to a greater or lesser degree by popular feeling. Thus it is seen how difficult it is to find an appropriate standard for appreciation.

Having broken into a universe composed of powerful and organized States, the African States with their fresh political structures are able to resist the centrifugal force of disintegration only through the power of nationalist feeling. Their first preoccupation is to safeguard their unity. As an entity, the State borne from the wreckage of colonization is endeavouring to maintain its existence,

by gathering together what were disparate elements despite its profound cultural unity that is in fact too profound to take immediate effect. This it does, if need be, by force, with occasional deliberate sacrifice of individual freedom. The poverty of the country exerts extreme pressure towards greater prosperity. The people upon whom new requirements are imposed are eager to attain this greater prosperity. However, when the outlook appears unpromising, one part of the population decides that it can step up the organization of economic and human resources in order to teach a more rapid rate of growth. This fraction also considers that, by virtue of its function, it is entitled, whether rightly or wrongly, to enjoy a higher standard of living. The Government demands discipline: the principle of unequal distribution of resources has no absolute justification and conflict results.

Democracy needs to be strong, faced as it is with the advancing and unceasing claims of the people. Anything that might modify the stability of the regime and the standards of distribution of all available wealth is often judged to be prejudicial to the internal security of the State. This idea is inspired by borrowed and inappropriate law and is then disputed, as is pointed out below. This objective historic conflict is also tinged with passion. The cultural element, the true mentality of the peoples here intervenes as an amplifying factor: Africa is engaged in a complete juridical revolution.

## THE SCOPE OF LEGISLATIVE ACTION

The immediate juridical importance of the place of freedoms or rights in a Constitution is not to be denied. In some cases these freedoms are proclaimed in the preamble; and in other cases in the body of the Constitution. In the former case the conception seems extensive and its mention represents a non-limiting appeal to the principle, whereas its mention in the Constitution seems restrictive. If rights are understood as "freedoms", in an extensive interpretation, the role of the State is seen primarily as one of abstention: the State must refrain from disturbing the individual's ability to enjoy those rights.

In any listing of human rights, one right is frequently treated separately, or even neglected altogether: *the right to equality*. Although often proclaimed, it is in fact the most violated. Without equality there cannot be democracy. Is it the blood link, the survival of the mentality of tribalism, that frequently results in nepotism? The essential condition for equality is undeniably to pass from the tribal form and mentality to the modern form of co-existence of individuals, safeguarded by institutions which to some degree guarantee standards of reciprocal behaviour among citizens. We therefore feel that the future of democracy in Black Africa is strongly bound up with institutionalization, which we thus deal with

below as one of the essential lines of development of our societies.

Once the principle of subordination even of Constitutions to freedoms is admitted, the practice must be guaranteed. It was Montesquieu who by his theory of the three powers first coined the idea as a guarantee of any libertarian system, even if he did not invent the expression of "separation of power".

In broad terms, the purpose was to break down what constituted monarchic absolutism. Montesquieu's doctrine and theories endeavoured to demonstrate by negative proof that without separation of power there can be no freedom. Such separation, although a necessary condition, is not a sufficient condition in itself. The principal functions of the State, it was argued, cannot be just and disinterested unless the organs responsible for applying them enjoy sovereign autonomy and are limited by nothing except the Constitution, which is in fact the expression of this balance. We now know that separation of powers can only be a principle and that the reality is more complex.

The legislative function is no longer the prerogative of the legislative assembly. It is limited in two respects:

1. In some countries, the competence of assemblies appears to be competence by empowerment. The scope of legislative action is laid down in the Constitution.
2. Since it frequently happens that the competence of the Executive is also based on empowerment, there remains a margin of uncertainty.
3. It may also happen that the Legislature delegates its legislative function to the government for certain subjects and for a limited duration.

This is not all, however. Whereas, in the case of fundamental legislative competence of the assembly and competence by empowerment of the Executive, the limits of governmental power may be more easily laid down, competence by empowerment of the assembly does not necessarily mean that all other questions are governed by regulations. Here again, the fact that the field of competence of the Legislature is stipulated may be interpreted in various different manners.

1. It may be thought from the start that stipulation of fields of competence is not a mere matter of repeating what already applies. It concerns a field which the Legislature may not delegate to the Executive. On the other hand, the Executive may decide all other questions. It must be previously distinguished whether general legislation should not apply, in which case the role of the Executive is of secondary importance only consisting in the application of such legislation through regulations.

2. It may also be held that the field of competence stipulated might limit legislative competence, all other matters being subject in principle to regulation.

3. There could also be common ground between these two fields of competence by empowerment. Should special authority be required for legislative action on that common ground? How should any conflict of competence be settled? Where one power fails to act or declare itself, is this sufficient grounds for the other to include this subject within its field of competence? Should there be an organ to decide such disputes, and if the Judiciary performs this function should it therefore be above the other two?

The regular functioning of the institutions and powers thus defined is obviously of value in normal circumstances. It is almost universally recognized that in a state of emergency the rules of distribution of competence no longer apply and that, in particular, the power of the Executive must be strengthened.

If it is admitted that powers may be extended in a state of emergency, there still remains doubt as to when there is sufficient danger to justify such emergency measures. Between the normal operation of institutions and the state of emergency there is a particularly important stage where the imminence and extent of the danger must be judged in order to consider whether a state of emergency should be proclaimed.

It might be supposed that it is a sovereign function of the Legislature to decide when conditions justifying a state of emergency occur. After stating that such a danger exists, the Legislature would then vote powers authorizing the Executive to decree a state of emergency. This procedure would perhaps be more normal and more in line with traditional rules.

Very often, however, it is not the Legislature that decides when the situation has occurred. It may be the Executive, but it may also be by a rather complex authority, such as through the council of ministers, acting with the previous approval by the president of the assembly. Some Constitutions allow for greater variation by assigning this prerogative of the Legislature in one case only to the Executive, namely when the assembly is not in session. This is the case in Liberia. Even then, however, the Assembly meets immediately in order to regularize the situation by its vote for or against such powers.

The national reports will undoubtedly demonstrate the whole range of approaches to this very important matter.

It will not be anticipating these reports to give an outline of certain major features that go beyond particular variations. This is what we call, perhaps not entirely correctly, the essential poles of African Public Law.

In view of the great diversity of countries here represented, theoretical integration is only possible at a relatively high level.

These essential poles will reveal the existence of specific common or diverging factors that will, however, serve to explain African Law.

We have already stated that African Law is largely inspired by the former colonizing countries. Some brief discussion must be made of the application of these models and of the way in which they have been superseded, without any judgment of value in that connection. We shall therefore attempt in the following lines to separate these indicative factors in order then to consider how the models have been superseded. Only then can we try to gauge the future, without any attempt to predict specific events but with a more modest aim of showing the permanent standards of orientation and action. In other words, the vital lessons will be learned only from the contents of national reports.

## **FACTORS EXPLAINING PUBLIC LAW IN THE STATES OF BLACK AFRICA**

### **(A) General**

Whether their tradition be British or French, the States of Black Africa display certain general characteristic features that transcend the divergent elements.

The identity of pre-colonial conditions represents the most immediately apparent common factor. We may here leave aside the direct influence of the law of those organized empires of Black Africa that have today vanished. Whatever legal values they may have transmitted through the perennial culture of our people has been indirect, because of the break in their history. The period immediately before the colonial conquest certainly knew nothing of the modern system of state. Tribalism, despotism or monarchism of that period had their value, but the impulse of the West has led generally towards industrial and technical civilization with the same values as in the West. For example, even despotism cannot ignore the law. There are always laws and customs that have validity beyond the personality of the prince. Even if he was able to ignore and deny what we call human rights, the prince could not ignore or deny certain human rights, those claimed by the men of his blood or of his class. Modern democracy seen in this aspect appears as an extension under the influence of the law of necessity. This does not mean that the problem of democracy is settled. There is no country in the world without a part of the population, of greater or smaller extent, enjoying privileges refused to others. In the gradual advance towards democracy, balance is achieved or lost by virtue of the rule of the majority. The standard of judgment has developed by a curious process to be the size of the majority, instead of the principle of unanimity.

## (B) Particular

The observer can hardly hope to understand African institutions and the way they operate without going into the history of the men who inspired them. The history of African politicians, their education and their ideas are of profound importance for the institutions themselves.

In the countries marked by the influence of Great Britain, the exercise of power, or more correctly apprenticeship towards that exercise, has very ancient roots.

The colonies or protectorates, such as Kenya and Tanganyika now have local Governments of Africans, albeit subject to the Governors representing the Queen. Institutions such as a council of ministers and a legislative council have limited constitutional powers, the Constitution itself being a charter granted by Her Majesty. The other miniature institutions are a supreme court and a council of state. The country is not independent and a Governor is there to top the pyramid. However, he is not omnipotent, in as far as the Judiciary obeys the law of Great Britain rather than the word of the Governor.

Thus, the countries marked by the colonial influence of Great Britain that are now independent enjoyed self government at an early stage. The citizens of those countries therefore have a clearer idea of institutions and the relations between them. Moreover, the old principle of local assemblies accustoms them to the *direct exercise of power*. The changes resulting from independence are thus well absorbed. Seen in this way, independence is a simplification, a consolidation of an existing power rather than a change in *the nature* of that power. The same applies to the institutions. This makes it less surprising that, although the two-chamber system is practised in both France and Great Britain the opposition in Ghana demanded the introduction of this system whereas the former French colonial countries never asked for it. The two-chamber system in Nigeria is required by the federal structure of the country, so that it answers the need for balance.

The French colonies, on the other hand, developed under *direct administration*. By the end of the colonial period, there was no substantial difference from a French *departement*. It is quite understandable that independence and the establishment of local institutions with legislative powers should bring about a *real change*, from which the citizens themselves look for miracles. African politicians have sat in metropolitan assemblies. They have drunk deeply of methods, manners and customs. The Third Republic influenced them profoundly as regards methods, the Fourth as regards subjects of concern and the Fifth as regards institutions.

The methods inspired by the Third Republic include the forms of oratory, the declaration of principles in preambles to constitutions and electoral strategy. The idea of electoral combinations aimed at circumventing democratic procedure because of the unequal capa-



cities of candidates was less acceptable here and likely to cause great indignation with the electorate staying away from the polls.

The instability of governments under the Fourth Republic and the legislative shuttle service between the two Chambers acted as a strong argument in favour of simplifying institutions so as to have a strong and lasting government. The two-chamber system was seen as a destructive plurality of power. The virtues of a strong democracy were proclaimed, by which an omnipotent government is to be understood. In order to ensure that governments stayed in power, unless guilty of constantly violating the rights proclaimed by the Constitution, such as the right of opinion, the right of assembly, the right of association, some Constitutions adopted the principle of a minimum life for governments.

The Government of the Congo is vested for the whole period of legislature, while the minimum assured life of the Government of Niger is three years. Whatever a government is like, and however unpopular it may be, it can hardly be overthrown during its first years in office. A double vote is necessary for the Government to be turned out in the Republic of the Upper Volta. Is this the wisdom of Africa? It may well be that after an initial hostile vote the passage of time will cause reflection after the heat of discussions is spent. Practically everywhere, the classic weapon of dissolution is there to safeguard the stability of government, since deputies by and large prefer to avoid the hazard of fresh public approval.

With the direct imprint of the Constitution of the Fifth Republic, there appears to be historical continuity in the principles of freedom, law and power. It seems to restate the principle of the supremacy of assemblies and laws. The Fifth Republic has not been transposed lock, stock and barrel to the conditions of Black Africa. Here, the thesis of a strong democracy places the Executive above the law, *de facto* even if not *de jure*. This situation is frequently accentuated by the one party system, with deputies swearing allegiance to the Government, in other words, government by the party. The party is then in the final resort the melting pot of Legislature and Executive, despite the differences between their respective organs. The party as an entity is led by its instinct of self-defence to intolerance towards opposition, and to easy concessions to the Government, which is then enabled to use this extra latitude and invade the theoretical field of competence of the other organs.

We therefore see a gradual and profound change taking place in the models that have inspired African Public Law.

## **HOW MODELS ARE MODIFIED AND SUPERSEDED**

It is no mere formal modification of models, such as instituting a single chamber in place of the two-chamber system.

Several factors have contributed to this genuinely substantial transformation. First and foremost, there has been the political

factor, with, for example, effective single party government, and the sociological factor with social aggregation in the form of organized groups, tribes or religious sects. But beyond these factors there are profound elements of imbalance not only between groups but between ideas. In the circumstances described above, there may be an unsuitable penal law taken over unchanged from the former responsible power. If this cultural factor remains despite outside changes, a certain relativity is introduced into penal responsibility. The ideas of internal or external security of the State conceived for other countries in different times appear curious, to say the least, in Africa. Can the same charge be levelled against the opposition when it discusses territorial limits? Obviously, an effort of imagination and creative thinking in local law would help to overcome the divorce between the socio-political situation and juridical conceptions. In many cases when the facts are seen apart from the legal interpretation, acts against "the internal security of the State" are more akin to an offence that does not yet exist but which might well some day: "offence against the stability of the Government".

This final aspect of private law, and particularly penal law, introduces another of the basic principles fundamental to the State, namely *order*, beside *authority* and *freedom*. This rediscovery of the unity of law as represented in these three conceptions has its parallel in Hariou's trilogy that recognizes the need for these three elements to be reconciled. If the balance swings from authority to freedom this will still be under a juridical order, since freedom does not exclude order.

Some examples may be quoted showing the difficulties arising from the modifications that African governments have had to make in western juridical principles with regards to basic rights.

1. In contrast to western countries, it is not unusual to see a single party government in an African State proclaim the dissolution of the opposition parties and the trade unions on the grounds of the internal security of the State. This does not mean that the dissolution of bodies whose actions are judged illegal is something unknown in western countries, but the motives are different in the two cases. In Ghana, Senegal, Upper Volta, Niger and the Central African Republic the opposition is judged subversive and sanctions issued against the parties and trade unions in which it is manifested. In most cases, freedom of association is recognized in Constitutions. Obviously, policies of different governments vary, and each case can only be properly judged in the light of the particular circumstances. As a general rule, however, the electoral system and the control of the legislature by a single party deprives the opposition parties of any hope of *obtaining a change through legal means*. Almost everywhere, except in assemblies in which the opposition is represented, as in Ghana, or in the federal States, such as Nigeria, the deputies vote as one man.

The impatience of African governments is generally to be understood. Faced with the difficulties mentioned above, they do not see why existing institutions should be questioned instead of being accepted in the determination to cooperate with the government for the construction of the country. But to understand is not to approve. Why then proclaim in Constitutions principles that are flouted every day?

A brief view of the historical origins of the African governments is necessary at this stage. Installed by the colonial power responsible, they took over the country with all its institutions at the time of independence. Freed of the presence of an outside authority, the domestic forces in their turn were freed after independence. In the western countries whose governments are the result of objective historical dialectics, without denial of autonomous development but also without rejection of outside experience, the Government reflects the balance of power, with the resulting stability. Here, on the other hand, independence upsets the whole general balance of power. Efforts to achieve a different balance meet the violence of the government in power. The notion of action harmful to the internal security of the State does not correspond to similar historical requirements in the two cases.

2. Existing penal law, whether of Anglo-Saxon or French origin, provides governments with no way of reaching individuals, rather than the groups hostile to them. The practice of administrative internment frequently applied in France as a result of the war in Algeria may well serve as a substitute in this respect. There will certainly not be any expulsion of nationals from national territory, but it may be that individuals will be forbidden to live in a particular area, and this without any previous authorization by the Judiciary. Examples are to be seen in Cameroun and Senegal. This is one of those cases where the Executive encroaches on the Judiciary, as judged in the classic conception of distribution of competence.

After this survey of the juridical panorama, showing how Africa has integrated western institutions and ideas, we may now consider what lies ahead.

## **THE FUTURE OF THE FREEDOMS IN THE AFRICAN DEMOCRACIES**

Black Africa of 1961 offers the jurist a most varied and therefore most extraordinary constitutional panorama. Until the entry of the young African States into the international community, it was possible to make a broad universal and geographical distinction between the different major versions of industrial civilization, the presidential system in the United States and South America, the parliamentary system of Western Europe with its scattered islets of monarchy and a socialist system difficult to comprehend or assimilate.

late with the traditional elements of our ethical and legal standards. This was how the constitutional world worthy of a jurist's attention appeared less than two years ago. This distinction ignored the fact that trusteeship is limited in time. Thus, the new Africa overthrows what Prelot terms "the constitutional jurisprudence".

Constitutional morphology has attempted to explain the difference between the African Constitutions of 1960 and those of Europe after the First World War by suggesting that the extension of the constitutional regime in Europe after the Treaty of Versailles was carried out in a spirit of anarchy whereas the African States were set up in calm and with the benefit of ready-made Constitutions presented to them with their independence. This explanation is only formally acceptable, and is hardly borne out by the actual content of the Constitutions. In a certain sense, the function makes the organ, but, to a certain degree also, the organ determines and guides the function. However, the decisive criterion appears to us to lie in the maintenance of human rights as far as ever compatible with the needs of the State. Two areas of similar character may vary one hundred per cent. Some monarchies are as close to democracy as some democracies are to dictatorship. Democratic Caesarism is unfortunately the modern illustration of that trend. Under the cover of democratic institutions, countries may progressively set up a regime that violates the basic rights of human beings. These restrictions and exceptions are normally decreed by governments acting in all good faith. Faced with a legion of problems, they do not understand the cause for disagreement and, if the law does not permit what they want to do, they feel it perfectly legitimate to sacrifice occasional rights at the altar of efficiency. They therefore advance slowly but surely towards situations containing great cause for alarm.

We mentioned above the question of trusteeship and its termination through emancipation. Constitutional analogies have not been hard to find. American constitutional law throws indispensable light on the origins of the Liberian system. The British parliamentary system and the British conception of the three powers are reproduced in the basic principles of Ghana and Nigeria.

Should not the principle of *habeas corpus* also be applied in the field of public freedoms? Here again modification is beginning and we have pointed out that the African States have preferred a single chamber system to the British and French systems, while the opposition in Ghana called for two chambers.<sup>1</sup>

In the former French territories, the office of President of the Republic has been set up, above the Presidents of the Council and Prime Ministers who took over both logically and historically from the Heads of Government under the framework legislation. In the British colonies, where the Governor is superior to assemblies and

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<sup>1</sup> "The Government's revised constitutional proposals for Gold Coast independence," Government of Ghana, 1956.

councils, control of legality is extra-territorial, being operated directly from Great Britain.

In as far as constitutionalism is a doctrine, with its own standards, we fear that it may have decisive effects in Black Africa.

Juridical sociology, on the other hand, will be exceedingly instructive to the extent it can be used to establish a typology. However, it would not be sufficient for the jurist if it were to be sociology alone and did not lead to certain essential conclusions of a juridical rather than sociological character.

This sociology must not overlook the dimension of time, however. Changes in the provisions of Constitutions may result in mutations that can cause a break in forms, and the result would be not *adaption* but *genesis*. In other words, any such study will not be complete without consideration of the constitutional history of the African countries, inseparable as it is from the constitutional history of the former metropolitan countries, which means the study of history itself.

The diversity of historical situation is undoubtedly an essential factor, but there is nevertheless a fundamental identity between the two poles acting as stimulus to change and injecting a certain unity in the situation of the African States.

The first of these poles is underdevelopment. It explains certain institutions, whereas simplification or inflation is responsible for others. By way of the cultural factors at stake, it also explains the mentality behind the establishment of these organs.

The second pole is the international juridical community. The interaction of communities, international public life, imposes certain almost indisputable standards on the universal conscience: freedom of religion; freedom of assembly; freedom of opinion; and freedom of association, all contained in the Universal Declaration of Human Rights.

These principles are essential to all juridical communities, even if there are differences in the result of their application.

These two poles are linked by a certain number of institutions. The juridical institution is a complex element introduced into social life. It is characteristic of democracy. The exercise of personal power is only compatible with a minimum of juridical institutions. Generally speaking, the institution fixes the power and guarantees its duration, but it also establishes the social relationship and guarantees citizens relative freedom from arbitrary action. Thus, if action is to be borne by these poles, the process of institutionalization is no less basic. The institution in itself is not enough. To a certain degree, it is what is made of it. This means finally that it depends on individuals themselves.

Within this framework represented by the two poles thus linked by institutions, the function of the State has changed with time. From having a function of merely abstaining from any violation of freedom, the State of the second half of the 20th cen-

ture, and more especially the State of the underdeveloped countries, very properly declares its desire to provide *positive benefit*, as economic science teaches that only the organization of the collectivity can enable proper progress to be made.

In the historical perspective of over-all integration, constitutional thought reflecting our modern concerns and linking up with its European origins, has been based successively on:

- freedom
- law
- government

Power today is no longer a matter of mere justice, but a basic factor of progress. It implies the transformation of economic and social conditions and, let us not hesitate to say, mental problems. Juridical balance can therefore no longer be appreciated in its formal and purely static aspect. To interpret the function of the State as primarily to achieve progress may be a gamble, since the criteria of what is progress differ according to whether it is the Government or the people judging the case. No declarations about perfect harmony can avoid this obstacle. Governments may vary very widely in their receptivity to popular feeling. The purpose of this gathering is to examine courageously and objectively the real juridical situation and not to make political declarations.

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The report we have presented may have seemed somewhat severe. If so, two reasons may be sought. In the first place, we believe that freedom is possible in a system of order and progress, but that without freedom no progress is possible. Secondly, in a partisan world, in which the hard-won human values are frequently threatened, we believed that it is the urgent duty of jurists to transcend partisan considerations to take a new step forward in the science and reality of law.

# INTRODUCTORY REPORT TO THE THIRD COMMITTEE

## **“The Responsibility of the Judiciary and of the Bar for the Protection of the Rights of the Individual in Society”**

by

HERBERT W. CHITEPO

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### **INTRODUCTION**

This African Conference on the Rule of Law is held at a time when the African Continent is on the brink of what may be called the Age of Africa. In World Affairs, Africa has already begun to play an important role. This Continent which, for many years, was cut up by Imperial powers in Europe is emerging into independence. Of the 24 countries represented at this Conference, all but a small proportion are independent in the legal sense, that is to say, are sovereign states. The remainder will be independent within a very short period of time.

The concept of National independence has, everywhere in Africa, carried with it the concept of democratic rules, i.e., the establishment of government on the basis of the consent of the majority obtained at a general election in which the majority of the people participate. Unhappily, there are countries in inter-tropical Africa which in international law, are independent sovereign states, but whose governments are not based on the consent of the majority, but on a small racial oligarchy. But, even then, changes are bound to come which will establish democracy as a corollary of national independence.

The arrival of the “Age of Africa” happens to coincide with the spread of the doctrine of the sovereignty of the people and the omnipotency of their duly elected representatives to legislate in order to express the will of the people. This may conflict with the lawyer’s ideal of national sovereignty, legislation and the maintenance of the Rule of Law.

The working paper for the Delhi Congress on the Rule of Law said:

"The power of the legislature to make laws, whether or not subject to formal constitutional limits is in a free society exercised on the assumption that the fundamental liberties of the people as a whole will not be violated".

In this one sentence was expressed the eternal conflict between Government and liberty. Every form of social organization involves a modicum of "government" or "regulation". Every such regulation involves a restraint of the freedom of the individual, but it is justified on the ground that it is for the general good of all, and this indirectly for the particular good of the individual himself.

It is on this basis that the concept of the Rule of Law has been evolved, that is, as an attempt to balance the needs of legislation and administration for social organization with the needs of maintaining the greatest possible degree of individual liberty consistent with social organization. The need for this arises out of what has come tacitly to be accepted by all modern states, *viz.*, that the freedom of the individual is one of the most important possessions of any man; without it, man is not truly man, he is something less than man. In fact, there is a sense in which it can be said that the maintenance of the freedom of the individual is the *raison d'être* of the existence of government or social organization.

In working out the concept of the Rule of Law, or the machinery for maintaining a proper balance between the needs of social organization or government and those of maintaining individual liberty, political philosophers, religious philosophers and jurists have all played a part but, in working out practical methods of achieving this balance, perhaps the lawyer has played the greatest part. It is for this reason that in both the two Congresses of the International Commission of Jurists – the one at Delhi and this one – a special committee has been set up to study and consider the lawyer's function in maintaining the Rule of Law, and the methods by which he can achieve this.

In an age such as ours, when social organization has become a skilled government function, when the Government, in order to achieve the objects of an advanced concept of social security and economic progress, seems to want more and more power to legislate for these ends, the threat to the liberty of the subject may well come from this source.

In Africa, in particular, the new states will need to make quick economic and educational progress. The new governments may well demand powers to legislate by regulation, as well as power to legislate for achieving economic social and educational progress, by state direction. It is in this field that the lawyer wishing to maintain the liberty of the subject, may have to keep a careful watch.

In Europe the age of government social and economic planning, which involves a potential danger to individual liberty, occurred after a period of *laissez-faire*, in which the individual's freedom,



particularly in the economic field, was virtually unlimited. When government planning came, the people has come to value greatly economic freedom, and freedom generally. Africa has known ages of freedom from government regulation or dictatorship, though many parts have also known the reverse. But, it is fair to say, that the African masses of the "Age of Africa", while they know Imperial regulation, may not be so ready to see the threat to their liberties in the pursuit by the new governments of speedy wealth, education and social development.

All this tends to suggest that the lawyer, in the "Age of Africa", may have to play a more vital part in the protection and defence of the Rule of Law, than in the past. In this age of special skills he will have to develop great skill and understanding in order to perform this task.

The International Commission of Jurists, dedicated to the preservation and extension of the Rule of Law throughout the World, at the Delhi Congress appreciated this, for the Congress specially requested the Commission to give special attention and assistance to countries now in the process of establishing, re-organizing or consolidating their political and legal institutions.

## **HISTORICAL HERITAGE**

Practically every state in Africa has had connection with some part of Europe. The legal institutions reflect this historical fact which has had two influences on the legal systems:

- a) a juxtaposition of an indigenous and a European law of persons or civil law as contrasted with the criminal law.
- b) a judicial or legal system which is similar to, or based upon, some system in Europe.

The juxtaposition of rules derived from indigenous African civil law, and an imported jurisprudence may raise important questions, requiring skill and wisdom on the part of the lawyers in Africa, in order to weld the two together, but this is hardly relevant to the Rule of Law as understood by lawyers.

More important is the fact that the general legal system is based on systems used in some country or other in Europe. One effect of this is that some European legal systems have tended to influence and direct the methods adopted in the various countries to secure the Rule of Law in the African States.

## THE AFRICAN LAWYER

The legal profession consists of judges, practitioners and teachers of law. It is to these persons that the protection and defence of the Rule of Law is entrusted. Among the judges are included every judicial officer from the lowest equivalent of the Justice of the Peace in England to the Law Lords in the House of Lords, from the lowest Magistrate to the Judge of Appeal in most African countries.

All must be, as far as possible, free from both executive and social pressures. For a law teacher who is not free to follow the reasoning of a free mind, is not imparting a free education. A judge who gives judgment designed to meet the pressures of the Executive, or of a particular litigant, or of a section of the community, is not acting reasonably. A legal practitioner who puts his clients interest above truth betrays our professional ethics.

In the rising area of Africa, the training of lawyers is going to be extremely important because it is in the training that the forms and norms are absorbed by the future practitioners and judges. It is obvious that schools of law will have to be established in many parts of Africa; the schools must commence the task of creating the legal profession, and the profession must set the standards for all who come. In view of the expense it may be necessary for lawyers serving a common system in different countries in Africa to be trained in a pooled law school to serve all of them as in the countries of the French Community. It is the task of the law schools to teach accurate law, to develop in the students a scholarly and technical approach to all legal problems, and to enhance the sense of personal and professional integrity.

But, apart from the personal qualities of the individual lawyer or would-be lawyer, the judicial system and the system of training lawyers must be designed to enable these qualities to manifest themselves in practice. The experience of the whole of the world shows that the minimum institutional requirements for the Rule of Law are:

- an Independent Judiciary,
- an Independent Bar and,
- an Independent Law School.

Independence in these bodies is only a relative matter; for, it is impossible to get a completely independent judiciary, bar or law school. Each one depends for its existence on the act of someone other than itself. Thus, the Judiciary must be appointed, promoted or in extreme cases, removed by someone. The rights of the Bar to appear in courts must be within the framework of some legislation. The law schools must be established by someone, and their cost must be borne by someone. In any case, lawyers whether as judges, practitioners or teachers, are men subject to

direct and indirect conscious and unconscious pressures and prejudices.

The institutional independence that experience teaches must be established as their object, an endeavour to minimize the extent to which these human failings will affect the administration of justice with particular reference to the Rule of Law.

1. The Judiciary is made as independent as possible by provisions for:

- a) Appointment of the judges for life.
- b) Guarantee of a salary which is well above average.
- c) Immovability from office except by cumbersome and difficult procedures, aimed at ensuring that the judges shall not be removed except for good reason.

2. The independence of the Bar is secured by:

- a) The inculcation of a sense of independence during law school days.
- b) The existence of a well known code of conduct for members of the Bar, enforced by disciplinary action, including expulsion from the profession.
- c) Absence of interference in the performance of legal duties outside the legal profession itself.

The independence of the law schools is possible only where universities and law schools are not instruments of state policy, but institutions of learning, where the teacher and students are free to follow their minds and the direction of their studies.

These are general statements summing up the experience of many countries in the world, which have faced the problem of working out practical rules for institutions and machinery for securing the Rule of Law. This general framework of practical measures designed to secure the Rule of Law appears to be accepted generally throughout the countries in Africa with which this Conference is concerned.

These countries may be divided roughly into two groups, viz., countries which derive their legal institutions from the Common Law countries such as Britain and America and countries deriving their legal institutions from one or the other of the Civil Law countries. The countries in the first group are:

Ghana, Nigeria, Liberia, Sudan, Tanganyika, Uganda, Union of South Africa, Southern Rhodesia, Northern Rhodesia, Nyasaland, Kenya, Gambia, and Sierra Leone.

In the second group are:

Mauritania, Senegal, Mali, Niger, Upper Volta, Ivory Coast, Dahomey, Tchad, Central African Republic, Congo Brazzaville, Malagasy Republic, Guinea, Togoland, Cameroon.

Ethiopia and Zanzibar are in a special class.

In the Common Law countries one may differentiate between independent states and territories in varying degrees of colonial dependence.

The independent countries, unlike the United Kingdom, have written constitutions which provide *inter alia* for the establishment of a Judiciary on principles very similar to those in the United Kingdom. Human rights are written into and guaranteed by the constitutions. The constitutions of Nigeria, Ghana, Liberia and Sudan – for instance – provide for human rights and for an independent Judiciary *inter alia* to protect those rights.

Neither South Africa nor semi-independent Southern Rhodesia, on the other hand, mention human rights in their constitutions, but in both cases the independence of the Judiciary and the Bar are accepted on somewhat similar lines to those followed in the United Kingdom. The judges are appointed by the Governor-in-Council, i.e., the Executive, they hold office for life and their salaries are secure from the Executive's interference during term of office – promotion of judges to Appellate Courts is also a right of the Executive.

In both countries the legal profession is separated into Barristers and Solicitors, as in the United Kingdom, called Advocates and Attorneys respectively. Both sections are statutorily regulated in that the qualification for enrollment in each branch is laid down by statute.

The two branches are organized separately into the Southern Rhodesia Bar Association, the South African Bar Association on the one hand, the Law Society of Southern Rhodesia and the Law Society of South Africa on the other. The latter two are statutory, but the Attorneys in addition have a non-statutory voluntary association known as the Side Bar Association. The code of conduct for the Bar Association is much the same as that of the United Kingdom, the salient features of which, so far as they affect the Rule of Law, are:

- a) That an Advocate must accept every brief offered him for a reasonable fee in the courts in which he holds himself out;
- b) that he must put his client's case without fear or favour, putting forward every legitimate argument that can be put on behalf of his client;
- c) that he must not act as judge by prejudging the merits or moral or legal justification of the client's case.

These are designed to ensure that unpopular causes or persons shall not be left without legal representation.

In both Southern Rhodesia and South Africa, unlike in the United Kingdom, the prosecution of criminal cases is in the hands of the prosecutors who are civil servants as well as advocates. In the traditional British system, the prosecution of criminal cases before the courts is done by members of the Bar in private practice, i.e.

independent persons (except in a few major cases). In both South Africa and Southern Rhodesia prosecution is done by the Attorney-General's staff, who are civil servants and therefore liable to executive pressure – in some cases. This may have a bearing on the Rule of Law, especially in cases of political or semi-political prosecutions.

In the Colonial dependent territories of Tanganyika, Uganda, Kenya, Northern Rhodesia, Nyasaland, Gambia and Sierra Leone, i.e., countries in the Common Law Group, the position regarding the independence of the Judiciary was in law as stated by Goddard C. J. in *Terrell v. Secretary of State for the Colonies* in 1953, viz.,

“The provisions of section 3 of the Act of Settlement relating to the tenure of judges of the Supreme Court in England did not apply to the Straits Settlements or to any other Colony. It is for the Crown by prerogative, or for Parliament by statute to set up Courts in a colony, and the conditions upon which judges there hold office are determined by the terms of the Statutes – made by parliament – or under the prerogative”.

Consequent upon this, in 1955 at the Commonwealth and Empire Law Conference, the following resolution was passed:

“This Conference is of the opinion that the Supreme or High Court Judges of the Colonial Empire should be appointed to hold office during good behaviour and not during Her Majesty's pleasure”.

Since that date various of the territories have enacted or are planning to enact statutes aimed at supplementing this resolution.

The general pattern is this:

1. The judges are appointed by the Queen through the Secretary of State for Colonies from among persons who either are already or have been judges in Her Majesty's Dominions, or Advocates of seven years standing.
2. Their salaries are fixed and cannot be reduced during continuance of office.
3. Their appointments are until the statutory age of retirement, and they may only be removed from office for proven inability or misbehaviour.

A procedure for removal is laid down, viz., the question of the inability or misbehaviour is referred to the Judicial Committee of the Privy Council (which must so advise the Queen) after an enquiry ordered by the Governor in the territory by three persons who have held high judicial office, has so recommended. This method provides, as nearly as possible, for the institutional independence of the Judiciary. There are variations on this theme, but all aim at the same result.

In all these territories, the legal profession is a fused one in that a person qualified as a Barrister in England does both the work of a Barrister and that of a Solicitor. In some a difference occurs at the stage when a practitioner becomes a Q.C. because from then on he must only do the work of a barrister. In all cases there is a statute regulating the legal profession, i.e., to say prescribing qualifications for practice and grounds and circumstances in which a legal practitioner may be disqualified.

In general there are no law schools in dependent territories, and qualifications are those in the United Kingdom or some other Commonwealth country. Thus, the normal mode of qualification is by qualifying in the United Kingdom as a Barrister or Solicitor, but Advocates from other territories in the Commonwealth are also accepted.

The Law Society in both Kenya and Uganda, for example, is the governing body of all legal practitioners. It is a body created by statute and the Committees of these bodies are elected by lawyers practising in the country. Thus, within the Law, the Bar is fully able to organize itself. Members of the Colonial Legal Service in the Attorney-General's staff, etc., are not members of the Law Society though the Attorney-General and Solicitor-General are *ex officio* members of the Law Society Committee, which has disciplinary powers.

The second group of countries consists almost wholly of African countries within the French community. Almost all of them follow the French pattern, under which the Judges are appointed by the Government, university qualifications being required, before appointment. A type of pooled law school for member states has been established, (see G. Mangin's article in the *Journal of the International Commission of Jurists*, Volume II No. 2, page 75 et seq.). The principle of irremovability of the Judiciary is laid down in several Constitutions *viz.*

The Constitutions of Mauritania	Section	43
Niger	„	45
Upper Volta	„	59
Ivory Coast	„	55
Tchad	„	50
Gabon	„	38

all make provisions enshrining the principle of irremovability of the Judiciary.

In addition, several of the Constitutions provide for the establishment of a "Superior Council of the Judiciary" (*Conseil supérieur de la magistrature*) on the pattern of the French corresponding institution:

Upper Volta	Section	58
Ivory Coast	„	54

All the Constitutions, e.g.,

Mauritania	Section	26
Niger	„	31
Upper Volta	„	36 and 57
Ivory Coast	„	37
Dahomey	„	45
Tchad	„	24 and 50
Central African Republic	„	21
Gabon	„	22
Guinea	„	32

with no exception, give the Legislature competence to fix the general structure of courts and the organization of procedures. This means that the exclusive power of enacting rules on these subjects is conferred on the appropriate legislatures, any interference by the Executive being excluded in accordance with the principle of separation of powers.

There is no specific provision in any of the said Constitutions to prohibit the Legislature from interfering with the course of pending or impending cases.

However, the basic principle of Separation of Powers and of the independence of the Judiciary, is laid down in most of the Constitutions.

Mauritania	Section	43
Niger	„	45
Ivory Coast	„	57
Dahomey	„	44
Tchad	„	50 and Preamble of the Constitution,
Central Africa Republic	„	33
Guinea	„	35

In addition, several of the Constitutions expressly say that the Judiciary is the guardian of individual freedom:

Niger	Section	45
Ivory Coast	„	57
Guinea	„	37

The net effect of this is to prevent any interference with the course of a pending or impending case or cases.

With respect to the organization of the Bar in the new African states, all that can be said is that under most of the Constitutions

the Legislature is competent to enact rules governing the *auxiliaires de la justice*; which include the Bar:

Niger	Section	31
Upper Volta	„	36
Ivory Coast	„	37
Tchad	„	24
Central Africa		
Republic	„	21

The information so far received suggests that there is room here for the more autonomous organization of the lawyers themselves.

## EQUAL ACCESS TO THE LAW

Even in countries in which there is no constitutional declaration of human rights, or which, having such declarations, have no specific right of equal access to law, or equal protection of the laws, it may be taken to be the lawyer's attitude that all persons are equal before the law and have equal access to it.

Thus, a South African Text Book Writer and Professor of Law, Professor Wille, writes:

“Rules of Law must be impartial; they must be the same for all persons, impartiality is in fact one of the main elements of reasonableness. There is a presumption that all the inhabitants of this country enjoy equal civil rights under the law. The Rules of Law must consequently provide equally of treatment for all persons irrespective of colour, race, religion or any other characteristics. Thus, for the enjoyment of protection of rights it makes no difference whether the individual occupies a hut or a palace, whether he is a native or non-native, whether he be white or coloured, European or non-European.”

This, it is common knowledge, is not always the attitude of the Legislature, and if a legislature enjoys parliamentary sovereignty then it may “lawfully” direct the courts and the lawyers to determine the rights of persons according to their colour, creed or race. South Africa, for instance, and to some extent Southern Rhodesia, do this.

But it is a tribute to the legal profession that even in South Africa the basic attitude of the lawyer is that justice means equality of all persons in their legal and human rights, whether such rights are proclaimed in a Constitution or not.

It is well known that in modern circumstances the declaration of human rights in a constitution or their theoretical recognition in law may be rendered worthless, if the litigant is not able to enforce the right. His ability to enforce or protect these rights be-



fore the courts often depends on his ability to secure adequate legal representation. It is common knowledge that everywhere the services of competent lawyers are costly and difficult to obtain.

In many countries in Africa there are large sections of the population which could never afford the normal charges made for legal services in court or out. To these persons the equality before the law appearing in the quotation from Wille's *Principles of South African Law*, *supra* would be an idle bit of philosophizing. Traditionally, lawyers have always been concerned to assist poor persons who need legal representation. Thus the idea of *pro deo* or Dock Defence arose as the lawyers contribution to the free, or as nearly as possible, free legal representation for cases requiring it. This tradition appears to have survived in most countries in Africa, especially where the person requiring legal representation is in danger of capital punishment or long terms of imprisonment. All reports received show that the legal profession everywhere has always been ready to represent the poor and other needy cases free of charge where "life, liberty, property, and reputation are at stake".

In the provision of legal aid, etc., there is again a division between the Common Law and the Civil Law countries".

In the Common Law Countries (which here include South Africa and Southern Rhodesia, and many of the African independent states which have recently won independence from Britain), the pattern appears to be that in criminal cases – of a capital nature – legal representation is always available, either as dock brief, or as *pro deo* or Dock Defence or on some state aided legal aid service for which a very low, almost nominal fee is paid from public funds. In Civil matters, in both Southern Rhodesia and the Union of South Africa, there is a procedure under which, in the superior courts, any person who is not able to raise a stated minimum outside the value of his personal clothing and tools of trade, is regarded as a pauper and may be given legal representation free of charge, either to bring an action or to defend one. As in both countries the most needy cases are Africans (i.e., non-Europeans) whose disputes come before other than a superior court, this scheme of things does not always help the people who need it most.

If the principle of equal access to the law and equal protection of the laws is an essential ingredient of the Rule of Law, as we submit it is, then it would appear that lawyers, particularly, lawyers in Africa, should continue to study ways and means of giving real effect to this essential of the Rule of Law by ensuring that all who need legal representation shall not fail to get it. This need is more important in Africa where there are so many who are poor and ignorant – and who may suffer unwarranted invasions on their rights either without realizing it, or realizing it, are powerless to defend their rights.

## The Congress at Delhi said:

“Equal access to law for the rich and poor alike is essential to the maintenance of the Rule of Law. It is, therefore, essential to provide adequate legal advice and representation to all those threatened as to their life, liberty property or reputation, who are not able to pay for it. This may be carried out in different ways and is on the whole at present more comprehensively observed in regard to criminal as opposed to civil cases. It is necessary, however, to assert the full implications of the principle, in particular in so far as “adequate” means, legal advice or representation by lawyers of the requisite standing and experience. This is a question which cannot be altogether disassociated from the question of adequate remuneration for the services rendered. The primary obligation rests on the legal profession to sponsor and use its best efforts to ensure that adequate legal advice and representation are provided. An obligation also rests upon the State and the community to assist the legal profession in carrying out this responsibility.”

The circumstances of each country are different, and it may be impracticable to work out any common method of achieving this clearly stated objective. In present day Africa the question of numbers of available lawyers to do this work is an important consideration. The following is a brief survey of legal aid available in such of the countries as have sent reports (Southern Rhodesia and Union of South Africa have been dealt with above).

**Mali:** In civil cases plaintiffs must make a cautionary deposit refundable if the action succeeds – this could work hardship on the poor litigant.

In criminal cases – a system much like that in France is in existence under which compulsory legal aid (uncompensated in any way) is granted to accused persons.

The type of counsel assigned to such cases is usually either a student or a junior barrister.

**Malagasy Republic:** Only in major criminal cases is legal aid available, irrespective of financial means.

If a barrister is not available there is a provision for the Court to appoint any suitable person to represent the accused.

There is a legal aid board which decides when legal aid may be granted in civil cases or minor criminal matters.

There is no free legal advice service.

**Kenya:** There is no organized legal aid in civil cases, but litigants may proceed personally *in forma pauperis*.

In criminal matters the Chief Justice may, in his discretion, grant legal aid to deserving cases. The remuneration is out of a fund voted by the Chief Justice for the purpose. In capital cases legal aid is granted as of course.

Advocates are ready always to appear for a nominal fee, or no fee at all, in cases affecting basic human rights.

Liberia: The law recognizes the right of all to equal access to the law and generally it is not difficult to obtain legal representation except in the hinterland.  
There is no organized legal aid scheme.

Uganda: The Government pays for the defence of those charged with capital offences by briefing advocates privately. In civil cases the Law Society usually allocates an advocate free of charge.

III

PROCEEDINGS OF THE  
CONFERENCE

## OPENING PLENARY SESSION

Tuesday, January 3, 1961  
(Morning)

Sir Adetokunbo A. ADEMOLA, Chief Justice of Nigeria and Chairman of the Congress, opened the session. He gave the following address:

"It is my privilege to welcome the distinguished Judges and Jurists from some 33 countries who are visiting us in Nigeria for this African Conference on the Rule of Law. The Conference has been made possible by the International Commission of Jurists with the co-operation of "Liberty", which is the Nigerian Branch of the International Commission of Jurists. Naturally I am glad that the African Conference is being held in Nigeria; it may be by accident or by design that Nigeria has been chosen as the venue. But it cannot be otherwise, for there is no country in this great continent of Africa other than Nigeria more anxious for such a Conference. For in addition to its size and population, its strict adherence to the Rule of Law, Nigeria can boast of more indigenous lawyers than the rest of the countries on the continent put together. Further, Nigeria by virtue of its size and its federal structure has an important role to play in the future stability of this continent.

"That this Conference is being held in Africa at this time, when so many important decisions have to be taken, when so many problems have to be solved, when there are signs of major conflicts, when the rule of force is being substituted for the Rule of Law, when all these various ailments have afflicted us in Africa, is not only significant but is also proper that a body dedicated to human dignity and justice should exchange ideas and reaffirm their belief in such practical problems pertaining to the Rule of Law.

"If I may divert a little. As a member of the International Commission of Jurists, I would like to trace briefly the history of the Commission. In the summer of 1952 a few prominent lawyers from different parts of the world met in West Berlin to discuss reported violations of fundamental rights in some parts of Europe. The outcome was the formation of an organization known as the International Commission of Jurists, which is a non-political association whose object is the mobilization of the legal profession for the protection of human rights and the expansion and fulfilment of the Rule of Law. Since 1952 the organization has grown in strength and has gained recognition throughout the world. In 1955 an International Congress of Jurists was convened in Europe, Athens, in Greece, being the venue. 150 lawyers and judges from 48 countries participated. At that Congress what has been called the *Act of Athens* was produced. This declares that the State is subject to the law and that Governments should respect the rights of the individual and provide effective means for their enforcement.

"In 1959 a second International Congress was held in Asia, New Delhi, in India, being the venue. 185 Judges and lawyers from 53 countries participated. At the end of it a *Declaration of Delhi* was produced. This declares the Rule of Law as 'a dynamic concept for the expansion and fulfilment of which Jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.' It is not unnatural to think that at the end of our present deliberations in Nigeria, solutions would have been found for the further strengthening and expansion of the Rule of Law.

"It has been said that the Rule of Law is merely an Anglo-American institution; that the concept of 'Government under Law' and such phrases as the 'Supremacy of Law' and 'the Rule of Law' are all purely Western inventions.

"The Communist analysis maintained that everything is legal which is good for the State and the problem of adjusting the legitimate claims of the individual and his society has no place.

"The Africans, it was suggested, might find a third legal system which is neither 'the Rule of Law' nor the 'Socialist Legality' propounded by the Communists.

"But the Rule of Law is not a Western idea, nor is it linked up with any economic or social system. As soon as you accept that man is governed by Law and not by whims of men, it is the Rule of Law. It may be under different forms from country to country, but it is based on principles; it is not an abstract notion. It exists not only in democratic countries but in every country where the law is supreme, where the dignity of man is respected and provisions made for his legitimate rights. Today, around us we see countries where basic principles are disregarded; where there are cases of arbitrary arrests and detention without trial; cases of denial of individuals to prepare their defence when charged; cases of repression of the opposition in parliamentary government; cases of negation of social and political rights; cases of the Judiciary stifled and paralysed by fear of dismissal of the judges. When we look round we find some of these encroachments of the Executive on the rights of individuals, which I have mentioned, in countries ostensibly practising parliamentary democracies, but in actual fact the individual is subject to such restrictions which deprive him almost completely of his freedom.

"One of the objects of the International Commission of Jurists is to promote all institutions connected with, and which may serve to strengthen, the Rule of Law. An independent Judiciary and a public spirited legal profession are absolute necessities in every country to keep untrammelled the basic principles of the Rule of Law, so that the world may be built up into a temple wherein dwells the spirit of liberty and justice. The legal profession is one which has always fought for liberty and justice, and it is for the maintenance of this constant struggle to protect and to insist upon the rights and liberties of men, so that each may enjoy to the full individual freedom consistent with the common good that the association of the International Commission of Jurists was formed. The Commission is an organization of individuals limited to 25 members by its charter but working through National Sections in many parts of the world, uniting together jurists from all over the world by common ideals as to the Rule of Law and justice; it is not an organization of Governments; the participants here are invited as individual jurists and not representing Governments; they will thus be able to express their views freely. We already have in Africa two National Sections: in Ghana and in Nigeria. It is hoped that after this Conference, many more National Sections will be formed in Africa.

"May I be permitted to take advantage of the time at my disposal to say that it is a matter for joy to members of the Bench in Nigeria to have the opportunity of meeting with the judges and jurists from other parts of the world; it is gratifying to know that all over the world we lawyers have one and one thought only about the obligation of our profession, which is, to leave no man defenceless nor oppressed however unpopular his cause or however odious the charge against him may be."

The CHAIRMAN then requested Alhaji Sir Abubakar Tafawa BALEWA, Prime Minister of Nigeria, who had honoured the opening session with his presence, to address the Congress. The Prime Minister gave the following speech:

"I am particularly happy to have been invited to address this distinguished gathering of jurists, firstly, because you are meeting in the hall which we use for our House of Representatives, and in which therefore we make our own laws, and, secondly, for the rather academic reason that the equivalent in English of my surname is Blackstone: this will explain why I appear to be so much at home here this morning, giving a talk on law.

"But this is a very serious Conference and I am going to address you frankly on the difficult question which you have chosen to discuss.

"I think it was the Emperor Justinian who reduced the whole doctrine of law to three principles - that we should live honestly, should hurt nobody, and should render to everyone his due. Now I suggest that this Conference in discussing the fundamental principles of the Rule of Law, as they apply to the general question of Government Security and Human Rights, cannot have a better starting point than these maxims of Justinian. In their brevity and their directness they are after all rather wonderful. It is a remarkable feat to be able to sum up the rules which should guide our lives, if we are to be counted as civilized beings, in those three short sentences: 'That we should live honestly, should hurt nobody, and should render to everyone his due.'

"A few weeks ago in this very hall I was addressing the African Regional Conference of the International Labour Organisation and I told them that in my opinion we in Nigeria were justified in regarding ourselves as leaders in the fight for the recognition of fundamental human rights. Now I remember that during the constitutional discussions which preceded our Independence, the question came up of enshrining in the Constitution those human rights which we believe to be fundamental in a civilized society, and it was pointed out that most of those rights were already included in the laws of Nigeria.

"And here I must say that people should know better than to make capital out of these fundamental rights by misrepresenting them to others and not explaining that the exercise of these rights is always subject to the provisions of the law. It is a great pity that people should deliberately cause confusion about such a vital matter.

"As I said these rights were already safeguarded by individual laws; nevertheless we felt that this was a subject of such tremendous importance that the human rights should not be left hidden here and there in a legal maze, and we insisted on having a special chapter of our Constitution devoted to the exposition of those fundamental human rights. It is chapter three of the Constitution of the Federation of Nigeria and you can find there not only the rights which we consider to be fundamental but also the provisions we have agreed upon for derogating from those rights in an emergency.

"We felt so strongly on this matter that it was agreed, and agreed unanimously, that the whole of this chapter three should be entrenched which means that no section can be altered without the prior consent of both legislative Houses of at least two of the Regions, and furthermore any change requires the support in the Senate and the House of Representatives of not less than two-thirds of all the members of each House.

"Perhaps you will wonder at these precautions; it is not that we mistrust ourselves but that elsewhere we have witnessed all too frequently the ease with which Governments representing only a sectional interest have been able to twist and change the shape of their laws, and to deprive even a majority of their citizens of their rights. In some cases this deprivation of rights has been carried out methodically and in cold blood, but in other cases resort has been had to the excuse that Government Security justifies the action. Well, you are going to discuss this second aspect and I must not steal your thunder but I warn you that I shall study very carefully every word which is spoken in this Conference and I reserve the right to come and address you again. Gentlemen, I do really wish that I could be present and take part in the whole of this Conference. It is a subject very dear to my heart and I am always mindful of that terrible saying that power corrupts.

We, who find ourselves in positions of authority, have a responsibility to preserve law and order and at the same time to guard the laws of eternal justice even while we are being guided by them – and how difficult it can be in practice as opposed to theory.

“I know that you will enjoy your discussions. I hope that you will have time to see a little of Nigeria and to meet many of my fellow Nigerians and that your stay with us will be pleasant and rewarding.”

The CHAIRMAN then called on Chief Arthur PREST, Barrister-at-Law and Chairman of “Liberty”, the Nigerian Section of the International Commission of Jurists, who spoke as follows:

“An international body of learned Lawyers and eminent jurists have assembled here today from all parts of the world, to discuss once again the Rule of Law with particular reference to the question of Human Rights and Government security in relation to various aspects of civil and administrative law.

“On behalf of ‘Liberty’, the Nigerian Section of the International Commission of Jurists, I welcome you all to this Conference and hope your stay in Nigeria will be an enjoyable and memorable one.

“‘Liberty’ was founded barely a year ago to further and uphold the principles and institutions of the Rule of Law in this part of the world. We are a young organization, and like most young organizations, we are still inexperienced and relatively unknown. That is why we take pride in the fact that the International Commission of Jurists have chosen Nigeria as the venue for the first international Conference on the Rule of Law in Africa.

“Here for the first time leading lawyers and eminent jurists from African countries of different legal systems and different languages have gathered to discuss the Rule of Law.

“We, the members of ‘Liberty’, consider this Conference as of the greatest importance. It is a valuable opportunity for us to exchange views among ourselves and with our colleagues from overseas in order that we may find a solution to our problems in the application of the Rule of Law in our respective spheres of influence.

“Nigeria emerged from colonialism barely a few months ago. We have achieved our Independence without rancour and without bitterness, and we shall ever be grateful to our former colonial rulers for their tolerance, patience and understanding. We have parted as friends and we shall always remain as friends.

“There are some doubts still in the minds of those who see us from afar, whether we could achieve unity in diversity. I think we can, because we Nigerians have always believed in the Rule of Law which springs from our respect for human dignity.

“Before the advent of western civilization various communities of this vast country now known as Nigeria, have always maintained a code of behaviour which is embodied in our unwritten diverse native laws and customs. We believe, for instance, that a man’s property cannot be taken away from him without adequate compensation. We also believe that a man cannot be deprived of his liberty, without due enquiry by the elders of the community in which he lives.

“Our past history is full of intertribal wars. We have always cherished and protected individual human rights and civil liberties. Contrary to the impression created in history books, these wars have not always been fought to capture slaves. They have been fought in nine cases out of ten to resist any attempt by one tribe or clan to impose its rule, custom or habit on its neighbour, however benevolent they may seem.

“In the last few decades, many nations have come to regard the unwanted interference with human rights as a violation of the Rule of Law and have dedicated themselves by various resolutions and declarations to established justice under the Rule of Law.



"One such declaration is the Universal Declaration of Human Rights as proclaimed by the General Assembly of the United Nations in 1948. Since the proclamation of this Declaration, many new sovereign nations have entrenched in their respective constitutions provisions for fundamental human rights. The Nigerian Constitution, for example, contains many of the provisions of this Declaration and of the European Convention of Human Rights of 1950.

"Despite these instruments we have seen in some parts of the world today how the liberty of the citizen is being sacrificed on the altar of political expediency, and how some nations are descending to the rule of the jungle. We have seen in Africa how so-called civilized nations are inciting newly emergent states to disregard the most elementary principles of human rights.

"We have known of cases recently where the decrees of the courts have been created with utter contempt; where systems based on the Rule of Law have been arbitrarily destroyed with the connivance of great powers. All this in spite of the proclaimed declarations and resolutions of the United Nations.

"When nations reach the stage where the right of freedom of movement is determined by the colour of your skin; where the right of freedom of expression is determined by one's political allegiance; where the right of freedom of worship is determined by the State in which one lives, where is the sanctity of the Rule of Law? It cannot be found in constitutional instruments, nor can it be found in what I may be permitted to term empty judicial decisions.

"Judges do not make the law. They only interpret the law. They have no means of enforcing their decrees - that power is vested in the instruments of the state, i.e., the police and the army. Where these instruments are controlled by a tyrant or a group of tyrants, the power of the court to uphold the Rule of Law is of no avail.

"If we believe, and I am sure we all do, that the Rule of Law is 'a living concept which applies not only to rules of substantive and procedural law but also to the requirements of a social and economic system that enables the individual to fulfil his aspirations and uphold his dignity,' then it is our duty to take up the challenge and show by our personal sacrifices and actions that we are prepared to promote and defend such vital principles.

"I can quote no better example than that of the Chief Justice of Southern Rhodesia who resigned his post recently in protest against a flagrant violation of the Rule of Law.

"We are glad to see that the International Commission of Jurists is not only dynamic on paper, but that it is becoming dynamic in action. The Commission must develop into an effective world-wide organization. It must inspire lawyers in the four corners of the globe to fight against every violation of the Rule of Law, not only in the law courts, but on political platforms, in educational institutions, in trade unions and in all fields in which they participate, because it is only by dedicated struggle that the survival of the Rule of Law can be assured.

"I cannot end without expressing the deep gratitude of the legal profession in Nigeria at being associated with the distinguished jurists of the world in carrying on this important and vital task of maintaining the Rule of Law.

"Once again I extend on behalf of 'Liberty' to all participants a warm welcome and earnestly pray that our deliberations will yield fruitful results."

The CHAIRMAN then invited Dr. John D. HUMPHREY, Representative of the Secretary-General of the United Nations, to speak. Dr. Humphrey said:

"Mr. Chairman, My Lords, Ladies and Gentlemen. It is my very pleasant duty this morning to convey the congratulations and greetings of the Secretary-General of the United Nations to the International Commission of Jurists and also to the host country of this most important and significant

conference. The International Commission of Jurists is a voluntary non-governmental organization in consultative status with the Economic and Social Council of the United Nations. It would be hard indeed to exaggerate the importance of these non-governmental organizations in the work of the United Nations and in particular in the work relating to the protection of human rights and fundamental freedoms.

"I could give you many examples of the role that these organizations have played. Let me refer only to one. When after the war the leaders of the principal victorious powers met at Dumbarton Oaks and prepared what became the blueprint of the Charter of the United Nations, there were in it certain references to the promotion of human rights and fundamental freedoms but if you will compare this blueprint with the Charter which eventually emerged from the Conference at San Francisco, you will discover vast differences and these differences were largely due to the pressure brought on delegates at the Conference in San Francisco and if the United Nations has now reasonable machinery for the international protection and promotion of human rights, it is in large degree due to the enthusiasm and faith of these non-governmental organizations represented at the San Francisco Conference.

"The same could be said of the contribution made by various non-governmental organizations to the work in the drafting of the universal declaration of Human Rights to which Chief Arthur Prest referred a moment ago.

It is, therefore, with particular interest that I will follow the work of this Conference. I hope, Mr. Chairman, that later I may have an opportunity to say something in some more detail perhaps about the work and programme of the United Nations in the matter of the promotion of human rights and fundamental freedoms. In broad outline I may say this much this morning and that is that over the past 15 years there has been a programme which may be conveniently considered in two phases: in a first phase – and this is to some extent chronological – the work of the organization was largely directed towards the drafting of international legislation and the fixing of international standards. The first great instrument adopted by the United Nations was, of course, the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly on December 10, 1948, and since then a whole series of conventions have been adopted most of which are now in force in relating to specific aspects of human rights. It would take too long, indeed, for me to try even to give you a list of these conventions but they cover many aspects of modern life and activity.

"Much more interesting although I realize that I am speaking here before a group of lawyers, and I am myself a lawyer, is a more recent development in the programme. It was easy enough to (I am speaking relatively because it has never been easy to do any of these things when you are dealing with the representatives of so many different Governments with such different political, racial, religious and philosophical backgrounds) arrive at some agreement in the fixing of international standards, it is much more difficult for an organization like the United Nations to do something concrete about the protection of human rights because by the very Charter of the organization the United Nations cannot interfere in matters of domestic jurisdiction. Nevertheless, over the last three or four years a new programme of action, which might perhaps with some exaggeration be described as an operational programme – has come into existence. And this comprises three things. As I said before I am leaving out the details and this is a very broad, general description of the programme that I am giving to you this morning. But the organization, through the Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and the Protection of Minorities is now engaged on a series of global studies or surveys of human rights and groups of rights. Some of these surveys have already been completed, including the very successful first survey of the Sub-Commission on Prevention of Discrimination dealing with discrimination in the matter of education and what is particularly

interesting, Sir, about these surveys is that the initiative is taken by the United Nations. The United Nations prepares a series of monographs dealing with various countries summing up the situation in those countries as it appears from official documents and certain information that is supplied by non-governmental organizations; then these monographs are sent to governments for their comments and suggestions and at that point a very interesting collaboration and co-operation is maintained between the international organization and the various Member States; as a result of all this preliminary work a report is then prepared which may contain certain conclusions and may lead to subsequent action, as an example in the particular case I was referring to where UNESCO has just adopted a convention dealing with discrimination in the matter of education.

"Now, secondly, and I myself as a lawyer attach the greatest importance to this development, the United Nations have requested all its Member States to report to it periodically on the progress that they have made for the implementation and respect of human rights. This, I think, is almost a radical development. If you will remember – throw your minds back – to the time of the League of Nations when a Japanese effort to amend the preamble to the constitution of the League was defeated, because it would have been an interference with the principle of domestic jurisdiction for the international organization to concern itself with the principle of racial equality. When you remember that that effort was defeated in 1920 and today the United Nations feels strong enough in these matters to request its Members to report to it on matters relating to human rights, then I think that that indicates that there has been some progress in these matters – at least in so far as the creation of international machinery for the protection of human rights is concerned. You may say that the United Nations has no way of forcing States to make these reports but the interesting thing is that they do make the reports.

"And finally, Mr. Chairman, there has developed a most useful programme which is indeed very similar to the kind of thing that we have here in Lagos this week. The United Nations is organizing – has organized – a series of regional conferences, regional seminars, on human rights. These seminars have taken place in all the continents of the world. Many of them, indeed most of them, have dealt with various legal aspects of the protection of human rights and we have found that the most useful and significant discussions indeed have been in respect of the protection of human rights in the administration of criminal procedure.

"Before sitting down, Mr. Chairman, may I also express my personal pleasure and satisfaction in being able to visit this beautiful country of Nigeria. It is important that this conference should be held in Africa and it is most significant that it should be in Nigeria which, although one of the newest members of the United Nations, has already demonstrated its intention to carry on the best traditions of the law for the protection of human rights. I am looking forward to hearing more at this conference about the specific institutions that have been devised to this end and to which the Prime Minister referred earlier this morning.

"I thank you, Mr. Chairman."

The CHAIRMAN then called on Sir Kofo ABAYOMI, doctor of medicine, to speak as representative of the non-legal liberal professions. He gave the following speech:

"Mr. President, Honourable Prime Minister, My Lords, Ladies and Gentlemen.

"When I saw the programme that I was to speak on behalf of the non-legal communities of Nigeria, I was in doubt whether my speech should embrace the Honourable Prime Minister as a non-legal personality. But that doubt has been cleared beyond all reason when I heard him quote Justinian this morning. It appears that not only practising barristers are suffused with

legal problems and their citations, even those who hold honorary degrees – hardly in *causa honoris* – are well at home with the justice of Rome.

“I speak for the non-legal community of Nigeria. We welcome you all legal pundits from every part of the world. This is a very unique occasion for this country and I would say, I venture, with due respect to you wise men, that Nigeria is now becoming a second Geneva. Since we have had our independence several conferences, societies and so on simply streamed in to give us the benefits of their experiences. You lawyers and judges have taken your very remarkable place in the queue too and you have come all the way from all parts of the world to enrich us with the wealth of your experience.

“We, common men, do not speak very high faluting legal phraseology but this much we must deduce of your deliberations, or the upshot of your deliberations, that is you are here as researchers for fuller freedom of human beings saturated with justice. We wish you all well.

“You could have noticed how very warm this country is. I understand some of you, when you arrived, flew from very cold countries to this place – that reminds one of the man who left some parts of Europe suffering from chilblains and when he got here within a few days he developed heat rash. Then the question was the chilblains were still there and there is the heat rash. A doctor was called in to solve the problem. He said I shouldn’t bother so much about the chilblains, they will dissolve themselves – this is a hot country. Warm as this country is, so is also our affection and we are only sorry that you cannot be here with us for a longer time. You will have been able to appreciate that the heat for some unknown reason bestows on us a great way of accommodating people. I won’t call this hospitality because the word hospitality is a very relative term, but when we go to eat here we go to eat in a superlative.

“Paradoxically we are meeting in Africa for the first time, not because we in this part of the world do not expect order – we do, as the Prime Minister and the Chief Justice have told you; but we feel we cannot know enough. Every human being is interlinked, there is no real independence in nature; every phase of nature is either inter- or intra-dependent. Even if we are so high up in the clouds of jurisprudence, still I think in this country we can give you something to think about with our old native laws.

“Our judges here are in a very difficult position to be able to approximate native law to the standards of Western law because I understand, with due deference to you, that Western laws are Christian, from different angles, Roman and so on and so forth and there is no define law peculiar to any country. So here, as your deliberations continue, you will be able to appreciate the difficulties of our judge or judges who nevertheless always see that justice is done and it seems to be done every time. We welcome you here on behalf of the Nigerian community and we do hope mosquitoes will spare you. There is one thing about our mosquitoes, they always respect our visitors. They are so used to the natives they go to them and try to irritate them, but you can take it from me that as long as you are here they will respect your feelings and see that you leave the country quite comfortably.

“Again on behalf of the non-legal community I welcome you and thank you very much, particularly most of you who are very very busy. You have left your practice, of millions of dollars, or millions of pounds to come to this country. We cannot exchange dollars or sterling for you in return but you can take it from me that the country gives its very wholehearted sincere thanks to you all. Thank you.”

The CHAIRMAN then invited the Honourable Vivian BOSE, President of the International Commission of Jurists, who gave the following address:

“Mr. Chairman, My Lord the Chief Justice. My first duty is to thank the Nigerian Government and the Ford Foundation of America for their very generous assistance in making this Conference possible. Without their help

and their generosity we would not have been able to make this Conference the very great success that it already promises to be. We owe them both a very deep debt of gratitude and I hope that we will be able to make it a point of honour to see that they feel that their outlay has been worthwhile. It is by our fruits that we shall be judged. Let us ensure that the fruits of this Conference are the very best that we can produce.

"I was very pleased to hear, Mr. Prime Minister, from you that you in Nigeria have incorporated a chapter on fundamental rights in your Constitution. I was pleased because we in India have also done that. But that is a personal reason. I am pleased for a more international reason, speaking on behalf of an international body. I am pleased because it shows that two peoples so far apart geographically are so near in mind and heart. And also I am pleased for another reason. It shows that these fundamental principles of which the Rule of Law is constituted are not peculiar to any one part of the globe or to any one race in it.

"I also want to thank 'Liberty', the Nigerian Section of the Commission, for the very hard and worthwhile work that they are doing. They invited us here and they have toiled to see that we are comfortable and happy. We are already able to see the first fruits of their labours and judging by that alone we are able to see that they are a real live and active Section. We, of the international headquarters, hope that others will now take heart from them and form Sections in their places. We already have one in Ghana and we hope that there will be Sections in all these various African areas and also elsewhere in the world because the world is watching what you are doing here, what we are doing in India, what we are doing elsewhere and if they find that you are doing worthwhile work, then they will follow your and our examples.

"At the moment we have National Sections in about 40 different countries and they represent well over 36,000 jurists. That's a large number, but is not nearly enough. We want Sections everywhere. We hope that after this Conference, sections will spring up like mushrooms all over Africa and elsewhere, but mushrooms with a difference, a new kind of mushroom that endures and not the kind that fades overnight.

"I might like to add incidentally that we are not here to join in the long queue of bodies that are out to give you their experience. We are here glad to share our experiences from various parts of the world with you but our object is deeper than that: we are here to learn from you and to share your experiences, to see what you have to teach us in the other parts of the world, of how we can all join together to bring about the achievement that the international body has at heart; its aims and its objects. That is our main purpose here, not to join a queue.

"We want you to help us stir the conscience of the world so that men like you and me, and the men and women of the land who are less fortunate than us, can get the ordinary decencies of life not only in their own lands, but also when they cross the frontiers of nations and go into other countries. We, you and I, want that when we go to other lands we, you and I, shall be treated as decent human beings so that we can walk free and direct in all countries, hold our heads up and be judged on our merits as men and women, and not be subjected to humiliations because of our colour or our race.

"Another matter that I want to touch on is to welcome the fact that we have been able to get the English and the French-speaking Sections of this continent together, so that they can meet each other, get to know each other and to understand each other, and, by a common understanding, born of trust and good will, that they will work together to achieve the great ends that you and we of the International Commission of Jurists have in view. I know that all who have come to this Conference understand our position of the International Commission. But I want, for a moment, to speak to a wider audience and tell them that we are a non-political body and that we do not concern ourselves with political questions but with human rights. We are, in a sense, the 'international watchdog' of civil liberties. That is one aspect

of our work, it is the more spectacular aspect. But our main function is less spectacular but far, far more important. It is to implant the seeds of liberty in the hearts and souls and minds of men and women and to act as a clearing-house of ideas. But I want to stress that we of the Commission cannot do this without your help, the help of our National Sections who are the real sentinels of liberty standing guard on the scattered outposts of the free world. And because we believe in liberty, the true liberty of thought and deed, we invite members of our conferences and congresses, in their individual capacities and not as members or delegates of any government or nation or body; we want your honest, free, untrammelled, and unfettered opinions, given freely and fearlessly, without any restraints save the restraints of courtesy, kindness, consideration and understanding of those who do not share your views. And remember that we do not want or expect, and we would be very, very foolish if we did, all the world to think alike and to build itself up upon one pattern. We of the International Commission realise to the full that each people must work out its own system according to the patterns of life with which they are familiar. But deep research has shown that underneath all these seemingly diverse patterns there lies a solid foundation of gold that is common to all systems that believe in the free way of life, a yearning and a thirst for freedom that is to be found in the hearts of men all over the world. Those foundations have found expression in the *Declaration of Delhi*. Men from many differing systems of government, from different backgrounds and different cultures met together there and agreed upon a common set of basic principles acceptable to all free men, irrespective of race, or colour, or religion, or culture. We want all men everywhere to study them, to believe in them, to preach the gospel to their own peoples telling them and asking them to believe in those principles from deep inner conviction, and to say: That is the way of life that we choose for ourselves. It is something that is neither of the East nor the West nor the North nor the South; it is ours because we believe in it, because we choose it freely without fear or compulsion. We want all the peoples in all lands to say: this shall be our heritage and the heritage of our children, and our children's children, and that no man, no nation, no dictator, no government will ever take it away from us. That is what we of the International Commission are out to achieve. And that, we believe, will bring peace, happiness, contentment and prosperity within the nations of the world. And we believe that when individuals within a nation learn to live in amity and concord with each other, making the Rule of Law their way of life, then, in course of time, nations will learn to behave in the international sphere in the same way towards each other and in the end we will come to the same way of life among nations as exists among individuals within a nation. An international Rule of Law that will replace the rule of the jungle that now prevails.

"This will come about by peaceful means, not by the force and compulsion of arms. On what foundations does the Rule of Law rest within the nations that believe in it and follow it? Not on force, not on guns, not on arms. The decrees of the courts against powerful governments are obeyed by those governments not because the courts have guns and bullets behind them. Any strong government could snap its fingers at the courts if it wanted. They don't – not because of the backing of force, but because the sway of ideas, the sway of moral compulsions, because the peoples of the land so will it, because they regard it as their right and their heritage and are willing to fight for it."

The last speaker was Sir Nageon DE LESTANG, Chief Justice of the High Court of Lagos, who spoke in French. A translation follows:

"You will have seen in the programme that I am down to give a speech of thanks. What the programme does not say is who I am supposed to thank and why. As nobody has put me right, I think I had better avoid offending anyone by thanking everybody – and first of all those who have

addressed this opening session. I feel sure that you too will have enjoyed hearing their eloquent and interesting speeches. They all mentioned human rights, and human rights together with the basic freedoms occupy a special place in the Nigerian legal system. These rights and freedoms, drawn straight from the appropriate Convention of the Council of Europe, are incorporated in our Constitution and defined in liberal terms. Our Prime Minister has already told you that a whole Chapter is devoted to this important subject. In addition to this, the Constitution contains various guarantees, both for effective application of these rights and freedoms and for their preservation. It is thus quite proper that Nigeria should have been chosen as the location for this first African Congress on the Rule of Law, a happy decision on which we congratulate the International Commission of Jurists. However, it needs recalling that in Nigeria the Rule of Law is no illusion or empty expression – it represents a solidly established fact of which the whole people is proud and for which we lawyers are thankful.

“As regards the Federal Territory of Lagos, the Constitution appointed the Court of which I have the honour to be Chairman to be primarily responsible for the protection of human rights and basic freedoms. I am therefore particularly happy that one of the Committees of this Conference should be studying the role of the Judiciary in the protection of human rights in society. We look forward to a very fruitful discussion.

“Hitherto, there has been scarcely any contact between jurists of the French-speaking and English-speaking African countries. In fact, I think I am correct in saying that this is the first time that so many lawyers and jurists of world-wide reputation and such diverse origin have come together on African soil. On behalf of the Reception Committee, I wish you all most cordially welcome, and particularly the delegates from African countries with a language and a legal system that differ from ours. Let us hope that these discussions and contacts with English-language colleagues will result in a sympathetic understanding or even friendship which will make for closer co-operation in African legal problems in coming times, particularly with regard to the Rule of Law. I believe this is one of the surest means of safeguarding recognition and respect for human rights and freedoms in the African continent. I shall not go beyond the few minutes allowed me, but before resuming my place I wish to thank the organizers of this Conference, too numerous to be mentioned individually, and the members of ‘Liberty’, which as you have already been told, is the Nigerian Section of the International Commission of Jurists. I wish to thank them for all the care and preparation they have put into the organization of this Conference. I also wish to express my warm thanks to the Government of Nigeria, whose active co-operation and financial assistance have smoothed over many difficulties. Finally, may I thank all of you for having come here today and say how much I hope your stay in Lagos will be both enjoyable and valuable.”

The CHAIRMAN briefly thanked the Prime Minister and the other personalities who had honoured this opening session with their presence, and then suspended the session for one hour. During the recess, participants were presented to the Prime Minister. Upon the resumption, Dr. T. Olawale ELIAS, Attorney-General and Minister of Justice of Nigeria, read his report, the text of which is reproduced above (pages 42 to 55). The CHAIRMAN then declared the session closed.

## COMMITTEE I

### HUMAN RIGHTS AND GOVERNMENT SECURITY THE LEGISLATURE, EXECUTIVE AND JUDICIARY

Chairman: RENÉ H. A. RAKOTOBÉ (Malagasy Republic)  
Vice-Chairman: PETER AMOS GEORGE (Liberia)  
Rapporteur: ABDOULAYE WADE (Senegal)  
Co-Secretaries MARK BOMANI (Tanganyika)  
VLADIMIR M. KABES (Legal Staff, International  
Commission of Jurists)

The list of registered members of the Committee is set forth at the end of this summary (p. 114). The Conclusions adopted by the Committee and approved in the closing plenary sessions are set forth on pp. 15-16 above.

**Tuesday, January 3, 1961**

15.00—1800

The PRESIDENT opened the first Committee meeting explaining the rules of procedure and outlining the general topics for discussion which had been set forth in the questionnaire previously distributed to the participants and which is reproduced in full on pp. 37-39 above. After a discussion on the procedure to be applied in dealing with the questions submitted to the Committee, in which Mr. A. S. SACRANIE of Nyasaland, Chief F. R. A. WILLIAMS, Chief M. E. R. OKORODUDU and Mr. R. NJOKU all of Nigeria took part, the CHAIRMAN requested that the Committee turn its attention to Question No. 1, which reads as follows:

- “1. (a) The extent, if any, to which any organ of the Executive has power to make rules or regulations having legal effect without express constitutional or legislative authority.
- (b) The availability of, and grounds for, judicial review of such parts.”

Mr. Kéba M'BAYE of Senegal asked the CHAIRMAN whether the participants were expected to address themselves to the questions by discussion of the law as it now exists and is practised in their respective countries or were to formulate conclusions as to the ideal application thereof. The CHAIRMAN replied that it was hoped that each participant would contribute information with respect to the



law as practised in his country and subsequently the Committee as a whole would come to agreement with respect to general formulations.

Mr. K. BOATENG of Ghana, in agreement with the CHAIRMAN, pointed out that in its approach to practical principles of law in Africa the Committee should consider the distinction now applicable between those countries which have achieved independence and those which have not.

Commenting on his Introductory Report, Mr. A. WADE of Senegal brought out the distinction which exists between those countries with French background and those with an English legal heritage. Mr. Wade further emphasized the particular problems of the economically less developed countries now emerging as independent entities and assuming an important role in world affairs. He pointed out that the role of modern governments is more than the prevention of interference with the enjoyment of freedom; it consists also in positive action to promote material as well as spiritual progress.

Professor T. M. FRANCK of Canada, referring to the general report submitted by Dr. Elias, suggested that a constitutional system which aspires to associate itself with the concept of the Rule of Law must be one in which any abrogation of judicial responsibility for the guarantee of fundamental freedoms or any restriction thereof by executive ordinance should be promulgated only when the Executive can discharge the responsibility of proving that there are special circumstances which warrant such action.

Mr. J. C. SHONIWA of Southern Rhodesia then presented an analysis of the position of the Legislature under the Southern Rhodesian Patent Letters Constitution of 1923. Mr. Shoniwa pointed out that under the present system of discriminatory property qualification there is not a single African in the Southern Rhodesian Legislature. Mr. K. BOATENG of Ghana welcomed the comments of Mr. Shoniwa and suggested that it was very important for the Committee to discuss in particular the problems confronting independent African states, and to what extent their respective Constitutions solve these problems.

Chief H. O. DAVIES of Nigeria then reviewed the paper which he had prepared for the Conference. He emphasized that under the present Constitution of Nigeria all powers to make rules or regulations and any form of delegated legislation must be based upon an Act of Parliament, and that a question of infringement upon fundamental human rights can be tested in the courts of law. Mr. K. BOATENG of Ghana mentioned the problems confronting many newly independent African states which have been given a Constitution and an entire legal system by another power and the subsequent necessity of adapting what has been inherited to the exigencies of their own customs and usages. In the example of his country, the speaker demonstrated the success of the process of elections and

referendum in replacing an inadequate Constitution by a different one.

Mr. Modibo DIALLO of Mali referred specifically to the Constitution of Mali of September 22, 1960, and pointed out that the division of powers between the Executive and the Legislature is clearly set forth. Mr. Diallo explained that the Legislature may by specific legislation authorize the Executive to carry out a certain programme involving matters normally within the sphere of the Legislature for a limited period of time. The Executive, acting through the Cabinet, with the advice of the State Tribunal, must, however, obtain ratification of its orders by the Assembly prior to a system of checks and balances between their respective domains and at the end of the relevant time limit the action ratified may only be amended by the Legislature. After adoption by the Cabinet such action may be the subject of judicial review on the grounds of its being unconstitutional.

Mr. Keba M'BAYE of Senegal suggested that in the case of his country it is desirable that the government and regulation of a state be divided between the Executive and the Legislature with a system of checks and balances between their respective domains and further that there be a final control resting with the Judiciary which should have a Supreme Court as the ultimate authority. Mr. M'Baye then outlined the answers given in his report to the subsequent questions before the Committee.

Professor G. BURDEAU of France distinguished between parliamentary legislation and regulatory authority. He explained that in Article 34 of the French Constitution of 1958 those questions which are reserved for the Legislature were specified and those not specified are to come under Executive control. He warned against Parliament's easy abdication of legislative powers under the pretext of transferring to experts the settlement of questions of administrative detail. He also objected to the abuse of exceptional powers which tend to become institutionalized to the detriment of civil liberties.

At this point the first meeting was brought to a close with the resolution to carry on with Question No. 1 the following day.

### **Wednesday, January 4, 1961**

09.00—12.00

Mr. P. A. GEORGE of Liberia, addressing himself to Question No. 1, stated that in his country during the recess of the Legislature, the President has the right to draw up certain rules and regulations for the government of the people. Mr. George explained that if the Legislature does not enact such a rule into law when it reconvenes the rule becomes null and void. Mr. J. M. GREENFIELD of Southern Rhodesia pointed out that in Northern and Southern Rhodesia and Nyasaland the Executive has no power to make rules or regulations

without express constitutional legislative authority. Further, said Mr. Greenfield, the courts can set aside any purported exercise of powers which is not authorized by an Act of Parliament.

Chief F. R. A. WILLIAMS of Nigeria proposed to sum up the debate on the first question to the effect that nowhere except in a totalitarian state is the Executive authorized to make rules or regulations having legislative effect without express Constitutional or legislative authority. Chief H. O. DAVIES of Nigeria supported the suggestion of Chief Williams.

Mr. J. H. C. SMYTHE of Sierra Leone commented that, although it is generally accepted that the Executive cannot of its own volition make any rule or law, within the colonial territories the Governor subject to the approval of the Secretary of State has the right to make legislation. The speaker stressed that this is true only in the colonial territories and added that he hoped that due consideration would be given in the course of the Committee's discussion to the question of human rights in the context of the definition of the Rule of Law as found in the Declaration of Delhi; this has stated in effect that principles, institutions and procedure not always identical but broadly similar, have proved, in the experience of lawyers from different countries in the world of varying political structure and economic background, to be important in protecting the individual from arbitrary government and in enabling him to enjoy the dignity of man.

Mr. A. S. SACRANIE of Nyasaland expressed the desire that later in the course of the Committee's proceedings a resolution be formulated with particular reference to those countries where it is questionable whether the Rule of Law is applied and human rights served with respect to legislative, executive and judicial institutions.

Mr. A. WADE of Senegal took up an earlier comment by Chief H. O. DAVIES of Nigeria and supported his proposal that constitutions alone be not considered the proper criterion for assessing the existence or denial of human rights. Some constitutions are adopted freely, some have been imposed without democratic processes. It would be therefore useful to study first the positive law as it exists in the various countries and territories and then to discuss the question of drafting and adopting constitutions. The speaker supported the suggestions made by Mr. Smythe and Mr. Sacranie as did also Mr. G. B. A. COKER of Nigeria who stressed the dedication of his country to fundamental human rights.

Professor G. BURDEAU of France turned the attention of the Committee to the necessity of differentiating between two major problems: the first was how to establish an acceptable constitutional system, and the second how to enforce respect for such a system on the part of those in power. The speaker saw in the existence of an effective opposition the best guarantee of individual liberties.

Mr. A. S. SACRANIE of Nyasaland and Mr. J. C. SHONIWA of S. Rhodesia then quoted instances of legislation in their respective

countries which they termed to rest on a negation of the Rule of Law.

After an admonition by the CHAIRMAN that the Committee had to avoid polemics in order to deal effectively with the important items on the agenda, Sir Louis MBANEFO of Nigeria requested that the Committee return to the analysis of Question No. 1. He felt that some confusion had arisen from the concept of Executive action "without express constitutional or legislative authority", and indicated that in his opinion this could occur only under an absolute dictatorship where one man is the source of law, power and other authority and can make law for the people without regard for any constitution. Sir Louis Mbanefo concluded that the question would, therefore, only apply in such a case and certainly does not apply in Nigeria. Professor T. M. FRANCK of Canada pointed out that in Canada the Prime Minister has certain rights to act under Royal Prerogatives not included in a Constitution, of which the most important is that of clemency, which is frequently exercised. The speaker also referred to certain implied executive powers derived from those expressed in the Constitution. As an example he cited "powers incidental to the treaty-making power of the President of the United States". Professor Franck explained that he mentioned these two provisions as examples of executive authority to act without express consent of the Legislature or specific provision in a Constitution.

Chief F. R. A. WILLIAMS of Nigeria appealed for a clear definition of the terms of the Rule of Law. He pointed out that while a dictator may impose a constitution and claim that all his authority is derived from such fundamental law, the Rule of Law does not obtain where there is a denial of political rights. He added that to be consistent with the basic principles of the Rule of Law, both the Constitution and the Legislature must represent the will of the people manifested through universal adult suffrage. Chief Williams proposed that the Committee adopt as a basic assumption for the treatment of Question No. 1 and the remaining questions the principle that there must be full political rights before conceding the Rule of Law to be fully applied in any country or territory.

Chief M. E. R. OKORODUDU of Nigeria urged upon the Committee a working method avoiding political controversy and proceeding from the presentation of the situation in individual free countries to conclusions that would benefit dependent territories as well.

Mr. M. O. AJEGBO of Nigeria supported the views of Chief Okorodudu and pointed out that from the viewpoint of dependent territories the Rule of Law could not be called a situation where a few people at the top legislated for the majority of the people. In his opinion law should be a reflection of the majority will of the people.

Mr. Mark BOMANI of Tanganyika suggested that the discussion centre first on the study of the situation in independent countries

as reflected in their constitutions and then switch to a critical inquiry into the conditions of the dependent territories.

Mr. Keba M'BAYE of Senegal observed that the Committee should not differentiate unduly between independent countries and territories that are still not free. Even in countries that enjoy political independence situations may arise when the government seizes and exercises power in violation of the elementary principles of majority rule.

Mr. J. H. C. SMYTHE of Sierra Leone analyzed the Declaration of Delhi and exhorted the Committee not to divide the subject of the discussion among independent and dependent territories with priority for the former, but to consider the rights of mankind and the dignity of the individual regardless of where they are endangered.

Mr. J. K. B. DANQUAH of Ghana called the position of the dependent territories the most dynamic question in Africa today. He felt that the Declaration of Delhi refers to free people only and should therefore be extended to deal with peoples who do not yet qualify as members of the free society envisaged in the Declaration. The adoption of such a new document would testify to the interest of the International Commission of Jurists in the rights of people who are subject to other peoples.

Chief H. O. DAVIES of Nigeria and Mr. A. WADE of Senegal made comments on the position of the Judiciary which the CHAIRMAN asked to be left to Committee III, where all questions pertaining to the position of the Judiciary under the Rule of Law were being fully discussed.

Professor R. R. BOWIE of the United States agreed with Chief Davies that the Committee had spent a disproportionate time on questions of procedure. On the assumption that there exist in any given state effective Legislature, Executive and Judiciary, he proposed to consider what their relationship ought to be for the purposes of the Rule of Law under conditions of emergency or delegation.

Mr. Modibo DIALLO of Mali pleaded for an association of law and of reality. It was not enough to speak of theories, but rather to translate these theories into practical application, to look ahead into the future and to search for universal principles applicable to modern codifications.

Mr. A. WADE of Senegal summed up his suggestion of an expeditious approach to the questions before the Committee. He proposed to study the positive law pertaining first to the relations of the Legislature and the Executive under normal conditions and then in the state of emergency. After these basic elements were established, the Committee should proceed to examine critically the constitutions and the various juridical realities that would have been thus brought to light.

In conclusion, Mr. V. M. KABES, Co-Secretary of the Committee, announced that all suggestions made during this discussion

would be considered, summed up by the Chair and submitted to the participants at the beginning of the next session.

**Wednesday, January 4, 1961**

15.00—18.00

The CHAIRMAN opened the session with the announcement that Mr. Peter Amos GEORGE of Liberia would take up the position of Vice-President of the Committee in view of the absence of Mr. Bereket AB HABTE SELLASIE of Ethiopia. The President then presented a summary of the debate with respect to Question No. 1 which read as follows:

“Any power of the Executive to make rules and regulations having general legislative effect has to be exercised only on the basis of a positive mandate by the Legislature and subject to its approval. Its object and scope should be clearly defined. It is the sense of the Committee that the express constitutional and legislative authority required for the exercise of delegated power under the Rule of Law presupposes that the people of the country in question have adopted the Constitution freely and that its legislative bodies have been established on such a basis as truly represents the will of the people. The Committee feels that the principle of one man one vote should prevail everywhere.”

It was agreed that discussion and possible amendment of this draft would be postponed until completion of the remaining questions on the agenda. Then at the suggestion of Sir Louis MBANEFU of Nigeria, supported by Professor R. R. BOWIE of the United States, the Committee took up Question No. 2, which reads as follows:

- “2. (a) Restrictions in the Constitution on the power of the Legislature to delegate legislative functions to any Executive organ.
- (b) If there are no such constitutional restrictions, a survey of legal provisions or rules of practice, if any, which restrict the competence of the Legislature in this respect.”

Chief H. O. DAVIES of Nigeria suggested that as most of the papers submitted to the Conference had answered Question No. 2 (a) in the negative, it would be appropriate for any members present holding views to the contrary to comment thereon; and, if not, the Committee should turn to Question No. 2 (b) which is contingent upon Question No. 2(a). With reference to Question 2(a), the speaker distinguished between the delegation of legislative powers and their abrogation; the scope of the delegation must be clearly defined so as not to become an abrogation.

In response to Chief Davies Professor R. R. BOWIE of the United States said that under the American constitution it is a principle that while the Legislature may confer legislative power on other agencies, it is usually understood that the delegation must

be channelled or guided so that it is not an unlimited abrogation but rather a conferring of power to carry out a purpose defined by the Legislature within a scope defined by the Legislature. Professor Bowie expressed the opinion that a blanket transfer of power would be held unconstitutional, but that the Legislature can clearly authorize the making of regulations within the boundaries defined by legislation and that the courts would decide whether the delegation is excessive or beyond what is considered to be constitutional.

The CHAIRMAN then read the reply which had been given to Question No. 2(a) in the report by the participants from the Malagasy Republic, which stated that:

"The delegation of legislative powers can only occur in particular circumstances for a specific purpose and for a fixed period of time, as determined by the National Assembly. In addition such delegation cannot occur until the President of the Republic assumes the responsibility of the Cabinet in his general political portfolio and, further, it requires a special vote of an absolute majority of the members who make up the National Assembly."

The CHAIRMAN, speaking in his capacity as a participant from the Malagasy Republic, also read a resolution of the National Assembly of that country of January 16, 1960, which gave to the Government legislative power during the period ending on October 3, 1960 in certain specified matters. He also cited the provision for an obligatory review of proposed delegated legislation by the Superior Council of Institutions which may with final authority prevent the promulgation of unconstitutional ordinances.

Mr. Keba M'BAYE of Senegal added his agreement that delegation of legislative authority should be strictly and carefully limited pursuant to the Constitution and subject to judicial review in order to avoid abuses thereof and to maintain a constant state of law and order. Mr. A. WADE of Senegal felt also that a distinction should be made between two areas of legislative action, one of which should never be delegated to the Executive, the other in which the Executive must within a reasonable period of time justify its action to the Legislature and obtain ratification thereof. The speaker pointed out that notwithstanding control powers such as exist in the Malagasy Republic, there is a necessity of permitting aggrieved individuals action in appeal against unconstitutional delegation of powers.

Professor G. BURDEAU of France further emphasized the danger inherent in exaggerated delegation of legislative power, even if provided for under the Constitution. Mr. Burdeau pointed to the desirability of majority parliamentary approval in many spheres of government activity, and the possibility of the Legislature discrediting itself in the eyes of the peoples by failure to meet this responsibility; Mr. Burdeau pointed out that too much or irregular delegation of legislative authority can represent a threat to the very essence of a parliamentary system which is the basis of representative government.

Chief F. R. A. WILLIAMS of Nigeria said that many of the participants from French-speaking areas were interpreting Question No. 2 as embracing mainly delegation in time of emergency, whereas Chief Davies had previously spoken of delegation in normal times. Chief Williams suggested that both instances should be explored. He explained that in Nigeria, by resolution of the Federal Parliament, an emergency is deemed to exist when the country is at war or when there is in force a resolution of the Federal Parliament to the effect that there is a state of national emergency; and the latter form of resolution cannot be in force longer than 12 months. Although there is no restriction upon the nature of the powers which Parliament may delegate to the Executive during an emergency, there is both a time limitation (renewal of which requires another resolution with a two-thirds majority of all the members of Parliament) and the practice in countries which follow the British system to the effect that only such powers as are reasonably necessary to cope with the emergency will be delegated, it being thus in the discretion of Parliament to determine whether the Executive is asking for too much power. Chief Williams asked the Committee to consider formulation of a general proposition that the Executive should only be granted such powers as are reasonably necessary to cope with the emergency and that Parliament should not abrogate its right to legislate for the nation.

Mr. J. M. GREENFIELD of Southern Rhodesia expressed his agreement with the statement of Chief Williams about the measures through which Parliament should restrict the Executive's powers to regulate. Mr. R. A. FANI-KAYODE of Nigeria added that delegation of powers which affects human rights for purposes of safeguarding the security of the state should be restricted to a particular period of time and also to the specific purpose for which the power is delegated. Mr. Fani-Kayode stressed that this general proposition should be applicable both in time of emergency and under normal circumstances.

Mr. B. T. GARDNER of Northern Rhodesia also expressed his agreement with Chief Williams but wished to include the point that when powers are considered for eventual use in time of emergency it would be preferable if such powers had first been put before and approved by the Legislature and then been brought into force at such time as the Executive thought fit. Mr. Modibo DIALLO of Mali pointed out, however, that it may be difficult both to foresee what powers should be delegated to the Executive in various emergency situations, and suggested that it is perhaps best that broad powers be delegated with a strict time limitation.

Chief H. O. DAVIES of Nigeria referred to a situation that may arise from a political development resulting in an overwhelming electoral victory of one political party whose leaders deem it necessary to ask Parliament for special powers to implement their legislative programme. He felt that such a situation is somewhat



removed from purely legal consideration as it depends in the final analysis on whether the majority party has enough sense of propriety to refrain from abusing its position. Referring to the problem of delegated legislation under emergency conditions, Chief Davies said he would like to see it limited in time and scope.

The CHAIRMAN said that as the Committee was now really touching upon Question No. 3, it should be included in the discussion. The CHAIRMAN then read Question No. 3 as follows:

"No. 3 The authority deciding whether a state of public emergency exists."

Mr. J. H. C. SMYTHE of Sierra Leone proposed that there should be a distinction between restriction upon delegation of powers in emergencies caused by outside forces and those due to internal subversion. Mr. Smythe agreed that no restrictions can apply in the former, but felt that in the latter, particularly in situations involving human rights, restrictions of the Executive should be such that Parliament is called upon to deal with the matter.

Mr. J. B. DANQUAH of Ghana reminded the Committee that it should not convey the idea that people exist for the government rather than that the government exists for the people. He warned that a delegation of powers exceeding simple regulatory authority or the requirements of an emergency situation deprives the people of control over their government. Agreeing with Professor Burdeau of France, the speaker felt that in Africa as in Europe power may corrupt and should not be withdrawn from control by the people.

Mr. J. M. GREENFIELD of Southern Rhodesia described the functions of the Select Committee in his country that acts as watchdog over delegated legislation and is thus a substitute for parliamentary committees which study Bills before the House.

Chief Ayo WILLIAMS of Nigeria suggested to the Chairman that considering the scope of the discussion which had ensued concerning Question No. 2 not only had that question been fully covered but also Questions 5(a) and (b). Following this suggestion, Chief H. O. DAVIES of Nigeria requested that the Chairman rule that Questions 2, 5(a) and (b) be closed, and that 3, 4 and 5(c) be taken up. The Chairman ruled accordingly.

Chief Ayo WILLIAMS of Nigeria asked Chief Davies to explain in the paper which he had submitted which body did he mean should decide whether an emergency existed. Was it Parliament or the Executive? Chief H. O. DAVIES explained that the answer to this question varies with the nature of the emergency situation. Chief Davies cited the instance of a local (regional) emergency where an Executive authority might be authorized to declare it, and a national emergency, such as a declaration of war, which would necessitate the vote of the Federal Parliament. On the other hand he suggested that the Committee consider whether a

Government that has a majority and is in no way threatened with being overthrown is justified in proclaiming a state of emergency.

Mr. Abdou Rahmane DIOP of Senegal pointed out the danger of abusing the state of emergency for political purposes and insisted that the Government that considers a situation as warranting exceptional measures has to obtain in the shortest possible time a mandate from the Legislature which has to be the ultimate authority on the application of emergency powers

Mr. Abdoulaye WADE of Senegal distinguished between the immediate threat of war, justifying the state of emergency, and internal disorders where such measures should not be applied as long as the forces of public order can effectively deal with the problem.

Mr. Marcel NGUINI of the Cameroun emphasized the specific character of the situation in his country where the Government is faced with an internal peril of revolutionary nature.

The CHAIRMAN then adjourned the meeting.

#### **Thursday, January 5, 1961**

09.00—12.00

The CHAIRMAN announced the suggestion of the Steering Committee of the Conference that Mr. François AMORIN of Togo, as a French-speaking member and Chief DAVIES of Nigeria, as an English-speaking member be appointed to draft together with the Secretaries of the Committee the final texts of its resolutions. This suggestion was unanimously approved. The CHAIRMAN also asked that all resolutions desired by the members of the First Committee be submitted in writing at the earliest possible moment that day.

The Committee then resumed its discussion on public emergency. Chief F. R. A. WILLIAMS of Nigeria, wished first to make a careful distinction between a simple disturbance and a breach of the public peace where emergency powers have to be invoked. Although the precise point at which a declaration of emergency can be justified is difficult to determine, Chief Williams cautioned against premature action by the Executive in the form of emergency powers which curtail or suspend fundamental human rights. Chief Williams was of the opinion that no government should assume emergency powers without express authorization by the Legislature. Chief Williams explained that in Nigeria a two-thirds majority of all the members of the Parliament is required before the Executive can proclaim an emergency in peacetime, and he felt that in any event there should be a prescribed majority required. Chief Williams added that even in an emergency under Section 29 of the Nigerian Constitution, a detainee without trial has the right to refer the question of his detention to a tribunal appointed by the Chief Justice, in order to ensure impartiality, and to have the said question reviewed every six months. Chief Williams then summarized

his answer to Question No. 3, stating that any authority deciding whether a state of emergency exists should always derive from Parliament because the declaration of emergency suspends fundamental rights of the citizen and for that reason it should be for Parliament and Parliament only to have the authority to proclaim an emergency. Naturally this would not cover a situation in which the country is suddenly attacked or the country finds itself suddenly at war. Chief Williams thought also that it ought to be possible for the Judiciary to pronounce on the good faith of Parliament and to refuse to enforce a regulation if it is clear that the proclamation of emergency was not made in good faith, and the Executive ought not to have any autonomous power to make laws in time of public emergency. Further, any power which the Executive possesses in time of emergency should be derived from the Legislature and should be subject to judicial review.

J. M. GREENFIELD of Southern Rhodesia mentioned the problem of a stipulated majority which might make the position of the Government impossible. Mr. Greenfield cited as an example the hypothetical situation in which a subversive group seeking to overthrow the Government by unconstitutional means might be represented by more than one-third of the Parliament, and thus, even though an emergency existed, as a result of which the Government could be overthrown, the latter would be powerless to declare such a state of emergency and take the necessary action. Mr. Greenfield also pointed to the possible difficulty of the very operation of the courts during a state of emergency, thus making any testing power granted to them illusory. Mr. Greenfield stated further that sometimes for security reasons it is not possible, in an emergency, for the Government to give the courts information without doing damage to the situation.

Chief M. E. R. OKORODUDU of Nigeria suggested that the Committee accept as an ideal model those provisions of the Nigerian Constitution which deal with emergency. Chief Okorodudu was of the opinion that these provisions solved the problems raised by Mr. Greenfield and others. He explained that Section 65 (3) determines a period of emergency in three ways; a *de facto* state of war; a resolution without any fixed majority that there is a state of public emergency; and a resolution by two-thirds of all the members of Parliament to the effect that the democratic institutions of the Federation are threatened by subversion. Chief Okorodudu also cited Section 28, which safeguards and preserves most of the fundamental human rights granted by the Constitution even during a state of public emergency and which provides that no measure shall be taken by the Executive which is not reasonably justifiable for the purpose of dealing with the situation which exists. Summing up Chief Okorodudu stated that these model provisions fully safeguard the security of the state, yet give the right of expression to the elected representatives of the people.

Mr. K. BOATENG of Ghana wished to associate himself generally with the analysis given by Chief Williams as, he said, the Constitution of Ghana follows it very broadly. Mr. Boateng raised, however, the problem of taking any Constitution as a model for all independent states in Africa because of the variety of the problems and situations obtaining in each country. He suggested therefore that the Committee adopt broadly the analysis given by Chief Williams with the additional statement that since the Rule of Law, as understood by the Committee, is based on the decisions of the courts, on the Legislature and on an honest and responsible Executive, it is assured that human rights will be safeguarded. Mr. Boateng also stressed that power exercised by the Executive must both be exercised and appear to have been exercised in good faith. Citing the English case of *Liversedge v. Anderson*, Mr. Boateng said that after a period of emergency any person affected by the exercise of an executive measure should have recourse to the courts to test whether the Executive did exercise in good faith the power conferred on it by the Parliament.

Mr. Keba M'BAYE of Senegal wished to distinguish between two states of public emergency: the first, when a Government or the administration is required to take action restricting liberty which is not provided for by previous legislation or regulation, which is called in some countries *situation d'exception*, the other an *état d'urgence*, when the Executive acts under previously authorized legislative authority. Mr. M'Baye requested that the Committee consider as a fundamental factor in a state of emergency that the Executive may in certain circumstances act without legislative authority in restriction of individual liberties, but that it is necessary to exercise strict control of executive action. This control can stem from a court with power to determine whether an *état d'exception* did in fact exist at the time. If an emergency does exist it may be necessary for the Legislature to delegate its powers to the Executive. Thus when the Legislature is in recess, the Executive may act with the understanding that the determination of a state of emergency shall be subject to subsequent ratification by the Legislature. Finally, Mr. M'Baye said that there should be judicial review of the power delegated or assumed and the acts thereunder.

Mr. A. Sattar SACRANIE of Nyasaland made the point that in the Federation of Rhodesia and Nyasaland there is in effect various legislation by which the same results are achieved as if the country were under a specifically proclaimed state of emergency. He also said that the question of majority approval by the Legislature presents an interesting problem there because in those countries the minorities are represented by a majority in the Legislature. Mr. Sacranie felt that such criteria could not therefore be applied properly to his country.

Mr. A. WADE of Senegal brought to the attention of the Committee the existence in his country of a *Commission des Délégations*

tions (Parliamentary Commission) to which can be delegated all power of legislation by the Legislature. Mr. Wade also pointed out that judicial review can occur in two instances; the first, when the Executive has exceeded its authority in contravention of valid legislation protecting individual rights; the second, when the delegation of authority is itself unconstitutional. Mr. Wade added that under the Common Law as applied in English-speaking countries there seemed to be a third instance when the delegation of power is unconstitutional.

Mr. Peter Amos GEORGE stressed the great danger when the Executive has the right to dissolve Parliament without judicial review. Mr. Modibo DIALLO of Mali told the Committee that there exist three legislative checks on the Executive. The first, explained Mr. Diallo, is that only the Legislature can determine that there is a state of emergency; the second, is that even during the exercise of delegated powers, the Executive can be restrained by further legislation; and the third when there is an *a posteriori* control in the fact that all action of the Executive must subsequently be ratified by the Legislature.

Mr. J. H. C. SMYTHE of Sierra Leone expressed agreement with previous speakers who warned that internal disturbances – genuine or artificially provoked – could serve as a pretext for the Government's exercise of emergency powers. Before such authority is granted, the Legislature has to discuss the matter. The speaker further stressed that the court of law is the guardian of individual liberties and every private citizen should have the right to go to court and ask for a declaration as to whether there is good reason for the state of emergency.

Mr. J. C. SHONIWA of S. Rhodesia quoted examples from his country in support of his argument that an emergency situation, being one of the instances in which individual liberties are curtailed or taken away, it is highly desirable that its proclamation rests on parliamentary authority. He surmised that in territories which have not yet achieved sovereignty and where Parliament does not therefore reflect the will of the majority of the people there is in effect a permanent state of emergency.

Professor T. M. FRANCK of Canada discussed the effect of a declaration of war or emergency on human rights. He expressed the opinion that the courts, as non-political entities, rather than the Executive or the Legislature, are the most effective protection of human rights in connection with an emergency situation. The speaker felt that, for example, in the event of deportation of a citizen, the burden should be upon the Government to show that the state of emergency continues. Mr. A. R. DIOP of Senegal was, however, of the opinion that under circumstances which require immediate action the Executive should be able to establish a state of emergency subject to subsequent declaration thereof by the Legislature within a reasonable period of time. Mr. Diop felt that the latter measure

is absolutely necessary if individual liberty is to be safeguarded.

Mr. M. BOMANI of Tanganyika gave formal notice of a motion to discuss the state of affairs in the Central African Federation that he wished to raise prior to the close of this session.

Professor R. R. BOWIE of the United States summed up the general agreement that the problem of striking a balance between the necessity of maintaining law and order under various conditions and that of protecting the interests of the community and at the same time ensuring that individual rights are properly taken into account is very difficult, particularly in new countries. Professor Bowie felt that the solution of this problem depends upon an adequate Executive able to act effectively, a Legislature which is based upon generally democratic election and an independent Judiciary. Further, asserted Professor Bowie, as a basis for the foregoing it is necessary to have a well-informed public opinion which will be able to provide an adequate social framework within which these institutions and procedures are to work.

Mr. J. K. B. DANQUAH of Ghana, referred to current detention of persons in Ghana under the Preventive Detention Act of 1958, passed in absence of a state of emergency. He said that a Declaration of Lagos issued by this Conference should make clear that where a Preventive Detention law is passed, when there has been no emergency declared, it should be within the power of the courts to declare this law invalid. Mr. Danquah suggested that a sub-Committee be appointed to examine the question of a Declaration of Lagos and draft such a declaration. It was decided that the Sub-Committee would be composed of Mr. Danquah of Mr. Sacranie, Professor Franck, Chief Okorodudu, Mr. Smythe, and Mr. Diop as a French-speaking member.

Mr. F. AMORIN of Togo discussed the particular features of parliamentary regimes that have to be considered when proclaiming the control of Parliament over the proclamation and implementation of powers exercised under the state of emergency. He pointed out that the balancing factor provided by the opposition and praised by Professor Burdeau may apply either in the traditional form of parliamentary opposition or, as it seems to be becoming a pattern in some African countries, merely within the unitary party ruling the country. In the latter case it would be futile to speak of parliamentary controls because the party is the government and Parliament is the party. The speaker referred further to the need of promoting legal education and democratic ideas in the people so that the last vestiges of colonial regimes be eliminated rather than perpetuated in repressive measures which crop up occasionally in newly independent countries.

Mr Amorin was in agreement with the suggestion of Mr. Danquah to draft a declaration of Lagos but also put forward the proposal that such a declaration should include reference to an African Convention on Human Rights to be approved by the various Gov-

ernments and to establish an African court charged with imposing punishments upon violations of the terms of the Convention.

Sir Louis MBANEFO of Nigeria pointed out that the basis of the Committee's discussion is the safeguarding of fundamental human rights. The assumption of extraordinary powers that deprive the citizen of certain of his fundamental rights is an extreme case in a country that has adequate means to preserve law and order. By the same token, the speaker discounted arguments favouring the discretion of the Executive to impose a state of emergency on grounds of a physical inability to convene Parliament. Conversely, he doubted the wisdom of giving the courts authority to decide whether the Legislature or Executive have acted bona fide in declaring an emergency situation. This question has many political aspects which courts should not be called upon to determine. He also suggested a resolution to the effect that, at least in Africa, each country should adopt certain fundamental human rights which should be incorporated and entrenched in their respective Constitutions.

Mr. A. Sattar SACRANIE of Nyasaland, following his previous notice, read his proposed text that was after some amendments adopted by the Committee as a Resolution.

In closing the session the CHAIRMAN requested that all resolutions be delivered to him in written form by 3.00 p.m. that day.

### **Friday, January 6, 1961**

09.00—12.00

The meeting was opened and presided over by the Vice-Chairman, Mr. Peter Amos GEORGE, who distributed to the Committee the Draft Conclusions which had been prepared the previous afternoon and evening.

Mr. F. AMORIN of Togo repeated his suggestion that a projected African Convention of Human Rights should be included among any declarations prepared by this Committee. The CHAIRMAN asked Mr. Amorin to prepare a draft to that effect at his earliest convenience.

Professor T. M. FRANCK of Canada referred to the third paragraph of the draft conclusions and suggested an amendment that was approved and finally incorporated in Section 1 of the Law of Lagos.

The CHAIRMAN requested Mr. Danquah to read the draft resolution of his subcommittee which was later submitted to the General Drafting Committee and was incorporated in the Law of Lagos. Mr. J. K. B. DANQUAH of Ghana read as follows:

"This African Conference on the Rule of Law consisting of (figure to be inserted later) Judges, practising lawyers and teachers from (figure to be inserted later) countries of the world, of which (figure to be inserted later) are from the Continent of Africa, assembled in Lagos in January 1961, under the aegis of the International Commission of Jurists, having dis-

cussed freely and frankly the Rule of Law in Africa and having reached Conclusions regarding human rights in relation to government security, human rights in relation to aspects of criminal and administrative law, as well as the responsibility of the Judiciary and independence of the legal profession, resolves that the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will and political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may realize his dignity and legitimate aspirations not only in free societies but also in all politically dependent territories to the end that mankind everywhere may achieve the ideals of a democratic and free society.

"We hereby solemnly affirm the Act of Athens and the Declaration of Delhi with respect to Africa and further solemnly declare:

"1) That in order to maintain adequately the Rule of Law all governments should adhere to the principle of democratic representation of the people of the territory in the legislature;

"2) That fundamental human rights should be written into and entrenched in the Constitutions or instruments establishing the government of any country especially the right of personal liberty which shall not be restricted by the Executive's discretion without trial in court but only by due judicial process;

"3) That in so far as the Constitutions make allowance for extraordinary powers in time of war or emergency, such state of war or emergency should only be declared with the consent of the Legislature and the application of such extraordinary powers to the rights of the individual should be subject to judicial review;

"4) That there should be in the Constitution or instrument establishing governments, provision for the appointment, dismissal and retirement of judges which insure the independence of the Judiciary; and

"5) That in order the principles and purposes of the Rule of Law should be vigorously observed and applied in Africa, the judges and lawyers of each African territory should take steps to establish in that territory a branch of the International Commission of Jurists."

There ensued a discussion with respect to the exact wording of this resolution during which certain suggested amendments were given from the floor. Due to the lack of time remaining for this Committee meeting, it was agreed that the discussion and suggested amendments should after the afternoon session be brought to the attention of the General Drafting Committee that would edit and coordinate all resolutions for consideration of the final Plenary Session on Saturday morning.

Mr. F. AMORIN of Togo then submitted the French text of a resolution concerning an African Convention on Human Rights which was translated as follows:

"This committee having considered the Universal Declaration of Human Rights of 1948, the different agreements which have already been drawn up on the model of the European Convention on Human Rights of 1950, the project for an Inter-American Convention on Human Rights and the necessity for universal acceptance of these fundamental



Human Rights and the establishment of an effective system to guarantee and protect these rights, recommends that the conference invite the African Governments to study the possibility of adopting an African Convention on Human Rights providing for the creation of an appropriate judicial body to which individual victims of a violation of human rights would have access."

The CHAIRMAN suggested that as no official English translation of this resolution had yet been made it be accepted in principle, translated and subsequently presented to the General Drafting Committee for eventual incorporation in the Law of Lagos. The Chairman's suggestion was unanimously agreed to.

The CHAIRMAN, upon thanking all members of the Committee for their kind co-operation, wished to declare the meeting adjourned. It was, however, requested by Chief M. E. R. OKORODUDU of Nigeria that the Committee be given the opportunity to express its appreciation and thanks to the Chairman, Vice-Chairman, Rapporteur and Co-Secretaries for their contribution to the achievements of this Conference. This motion was unanimously carried and the meeting was then declared officially closed.

## LIST OF REGISTERED MEMBERS OF COMMITTEE ONE

- |  |   |
|--|---|
| Sir Kofo ABAYOMI<br>(Nigeria)                          | Mrs. Ogo GUEYE (Senegal)                                      |
| M. O. AJEGBO (Nigeria)                                 | S. O. IGHODARO (Nigeria)                                      |
| O. AKINFOSILE (Nigeria)                                | Chuba IKPEAZU (Nigeria)                                       |
| François AMORIN (Togo)                                 | Vladimir M. KABES<br>(International Commission<br>of Jurists) |
| Gila Mikael BAHTA<br>(Ethiopia)                        | Sir Louis MBANEFO<br>(Nigeria)                                |
| Sir Vahe BAIKRAMIAN<br>(Nigeria)                       | Kéba M'BAYE (Senegal)   |
| Kwaku BOATENG (Ghana)                                  | F. S. MCEWEN (Nigeria)  |
| Mark BOMANI (Tanganyika)                               | Marcel NGUINI (Cameroun)                                      |
| Robert BOWIE (U.S.A.)                                  | Raymond A. NJOKU<br>(Nigeria)                                 |
| Georges BURDEAU (France)                               | Chief M. E. R. OKORO-<br>DUDU (Nigeria)                       |
| G. B. A. COKER (Nigeria)                               | S. QUASHIE-IDUN (Nigeria)                                     |
| Chief O. I. DAFE (Nigeria)                             | René RAKOTIBE<br>(Malagasy Republic)                          |
| Joseph K. Boakye<br>DANQUAH (Ghana)                    | A. Sattar SACRANIE<br>(Nyassaland)                            |
| Chief H. O. DAVIES<br>(Nigeria)                        | J. H. C. SMYTHE<br>(Sierra Leone)                             |
| Modibo DIALLO (Mali)                                   | C. O. SHONUKAN (Nigeria)                                      |
| Abdou Rahmane DIOP<br>(Senegal)                        | John Cyril SHONIWA<br>(Southern Rhodesia)                     |
| R. A. FANI-KAYODE<br>(Nigeria)                         | Crispin TSHIBANGU<br>(Congo-Leopoldville)                     |
| Per T. FEDERSPIEL<br>(Denmark)                         | Abdoulaye WADE (Senegal)                                      |
| Thomas M. FRANCK<br>(International Law<br>Association) | Kurt WALTERS<br>(Federal Republic of<br>Germany)              |
| Brian Thomas GARDNER<br>(Northern Rhodesia)            | Chief F. R. A. WILLIAMS<br>(Nigeria)                          |
| Peter Amos GEORGE<br>(Liberia)                         |   |
| Julian MacDonald GREEN-<br>FIELD (Southern Rhodesia)   |   |

**COMMITTEE II**  
**HUMAN RIGHTS AND ASPECTS**  
**OF CRIMINAL AND ADMINISTRATIVE LAW**

Chairman: KWAMENA BENTSI-ENCHILL (Ghana)  
Vice-Chairman: M'Pé BENGALY (Republic of Mali)  
Rapporteur: A. IGNACIO SANTOS (Togo)  
Co-Secretaries: SAMUEL N. WARUHIU (Kenya)  
C. D. M. WILDE (Legal Staff, International  
Commission of Jurists)

The list of registered members of the Committee is set forth at the end of this summary (p. 132). The Conclusions adopted by the Committee and approved in the closing plenary sessions are set forth on pp. 16—18 above.

**Tuesday, January 3, 1961**

15.00—18.00

Under the title "Human Rights and Aspects of Criminal and Administrative Law" the Committee addressed itself to the questions set forth in the questionnaire previously distributed to all participants and which is reproduced in full on pp. 37—39 above.

The CHAIRMAN opened the first session reminding the members of the Committee that each person was attending in his private capacity and should therefore feel at liberty to speak freely. Addressing himself to the questionnaire the CHAIRMAN suggested that the more specific questions with respect to bail under heading No. 4 should be dealt with first, then items 2 and 3 with respect to deprivation of liberty on grounds of public security could be treated, and finally the broader review of administrative action under item No. 1. The CHAIRMAN'S suggestion met with the approval of the entire Committee and this procedure was subsequently followed. The Committee thus turned its attention to Question No. 4 which reads as follows:

- "4. The right to bail:
- (a) The extent and limitations of the right to apply for bail;
  - (b) The authority (authorities) empowered to grant or refuse bail;
  - (c) Constitutional or other legal requirements governing the reasonableness of bail and the criteria by which such reasonableness is determined.
  - (d) Provisions, if any, for appeal against the refusal of bail."

Mr. P. CHARLES of Southern Rhodesia stated that under the law of Southern Rhodesia the right to bail is available in theory to all accused except on a charge of treason, murder or rape. In the

Magistrate's Court when bail has been refused the accused may appeal to the High Court. When the accused has been committed to trial by the High Court, at the end of the preparatory examination, the accused has the right to apply for bail again with the same exceptions mentioned above. Bail is granted upon the personal recognizance of the accused or the production of money or surety. Mr. Charles pointed out that the Roman-Dutch law is more favourable than English law in the matter of bail pending appeal. Under the latter this is granted only under exceptional circumstances; under the former the same principles of bail mentioned above apply to an accused pending appeal. Mr. Charles added that one important change has been brought about by Law and Order Maintenance Act No. 53 of 1960 in its provision that bail must be refused by inferior courts and by the High Court if the Attorney-General certifies that it is likely public security would be prejudiced.

Mr. A. RAZAQ of Nigeria pointed out that the main difference between Nigerian and South Rhodesian law on the subject of bail is that subsequent to conviction and pending appeal a prisoner enjoys less latitude concerning bail. Bail pending appeal is, under the law of Nigeria, an indulgence at the discretion of the court, and the prisoner must show exceptional circumstances. Mr. Razaq explained that the law provides that this shall be at the discretion of the judge but contemporary judicial interpretation based upon English cases has determined that this discretion shall be exercised only in exceptional circumstances. Mr. Razaq cited the case of such judicial interpretation when an appellant was sentenced to only one month and the appeal court was to sit only three months later. Mr. Razaq explained that in this case it was ruled that the circumstances were not exceptional and hence not sufficient to grant bail. Mr. C. M. BOYO of Nigeria referred to the courts of the first instance, and condemned the practice of the prosecution being allowed to object to bail on grounds that investigation has not yet been completed. He termed this as being unfair to the accused. The *RAPPORTEUR* asked Mr. Razaq what authority can grant bail to a convicted person. Mr. RAZAQ replied that it is the same court that tried the case but if it is a Magistrate's Court and bail is refused the accused can apply to a High Court judge for bail.

Mr. E. R. M. CARLTON of the Republic of the Ivory Coast noted an essential difference between English and French-speaking systems. Mr. Carlton expressed astonishment at the concept of provisional liberty after conviction and also the concept of bail involving money, bond or guaranty. Mr. Carlton said that under the Code of Penal Procedure of 1958, at present in effect in his country, provisional liberty must be granted and that "détention préventive", (not to be confused with preventive detention as discussed below - of which the French equivalent term is "internement administratif"), is an exceptional case and is not related to financial factors. Provisional liberty is therefore determined pursuant to the nature of

the crime, not the economic position of the accused. Mr. Carlton concluded that "détention préventive" can be effected for five days only without special order which must be renewed each four months. Mr. W. H. HASTIE of the United States in reply to Mr. Carlton's comments concerning bail after conviction, said that even though a judge of the first instance may convict the accused, the judge may be sufficiently modest to recognize the possibility of error in his action, particularly when a case involves some rather doubtful questions of law; and that, unless the case is one of murder or a serious felony, the judge would normally admit to bail. Mr. Hastie added that the appellate court may also admit to bail if it so considers, by the nature of the case, that there exists a substantial question requiring review. Mr. Hastie also questioned the statement by Mr. Charles that in Southern Rhodesia public security constitutes a ground for refusing bail. He pointed out that in the United States it is an important safeguard of personal liberty that courts still have power to admit to bail even though the Attorney General requests to the contrary. Mr. P. CHARLES of Southern Rhodesia replied that Mr. Hastie's criticism was not only correct but that this feeling was shared by a majority of the members of the Southern Rhodesian Bar who had prepared a statement of protest, which was, however, unsuccessful.

Mr. M. ROLLAND of France, returning to the question of provisional liberty pending appeal, pointed out that the question in the minds of the speakers from countries of civil law background may stem from a confusion of terms. While agreeing that bail appending appeal is not permitted, Mr. Rolland stated that pursuant to the French Penal Code of 1958 it is possible to declare that a punishment will not be enforced if for a period of five years the accused is not convicted of any further crime and further that a system of probation on the basis of good conduct exists under the 1958 Code.

Mr. N. S. MARSH of the United Kingdom evinced interest in Mr. Carlton's earlier comment about the financial element in bail. Mr. Marsh pointed out that in general there is a great deal of flexibility in the sum fixed, and further that it is not necessary to produce the amount. Mr. Marsh continued that even though the accused may give a guarantee of a large sum of money, it is generally recognized that he would not be able to pay it if he failed to observe the conditions of bail. Mr. Marsh concluded that the Common Law system of bail is therefore not merely on a financial basis and not so different from the general principles of provisional liberty. Mr. KOI LARBI of Ghana agreed in general with the principles of bail as expressed above, but wished to point out that in actual practice in Ghana the accused is often induced to plead guilty in order to have a case dealt with at once and avoid being remanded in custody with the subsequent problem of seeking bail.

Chief A. PREST of Nigeria brought up the practice of police

deprivation of personal liberty in Nigeria by arresting a suspect in the morning, releasing him at night and requiring him to reappear the next morning, a practice which may go on for about three weeks without the person being actually in custody as, in the latter event, he must be brought before a magistrate within 24 hours, and can therefore apply for bail. Mr. B. d'ALMEIDA of Dahomey questioned the equity of the common law system allowing police to determine whether the question of bail arises. Mr. d'Almeida stressed that under the French system the accused must be brought before the *juge d'instruction* (magistrate).

Concerning these difficulties in connection with bail, and at the request of the Committee, Professor Louis B. SCHWARTZ, an observer from the University of Pennsylvania, who is at present active in drafting a model criminal code, was asked to speak. Professor Schwartz stated that under the proposed model penal code avoidance of many of the problems of bail is attempted by substituting the use of a summons from the police directing the accused to appear on a named day before the court.

The CHAIRMAN then asked the Committee to direct its attention to subsection (b) as to the authorities empowered to grant bail. Mr. A. RAZAQ of Nigeria outlined the system in the English-speaking countries as the following: first, the police, second, the trial magistrate, and third, (after conviction) the court of trial or the court of appeal. Mr. P. CHARLES of Southern Rhodesia added that under the English-speaking system there exists a right to apply to the High Court if bail is refused in the first instance by the magistrate or lower court or if excessive bail is fixed. Mr. N. S. MARSH of the United Kingdom stated that in England in certain minor cases it is obligatory for the police to release a man on bail before he appears in court. With respect to the French system, Mr. E. R. M. CARLTON of the Republic of the Ivory Coast stressed that only a judicial authority can grant provisional liberty which excludes the police.

The CHAIRMAN then turned to the question of the grounds for refusal of bail, noting that for the French-speaking areas perhaps the question should be the grounds on which an order under special motivation might be made. Mr. E. R. M. CARLTON of the Republic of the Ivory Coast was requested to summarise these grounds. In doing so Mr. Carlton referred first to the instance of the investigation being incomplete, second, the ground that there is sufficient reason for a judge to presume that the accused will flee from justice, and third, when the accused has been apprehended *in flagrante delicto* committing a crime of a most serious nature which might be repeated. Mr. P. CHARLES of Southern Rhodesia then set forth four reasons for which bail may be refused in Southern Rhodesia: that the accused may not attend his trial; that he may interfere with the administration of justice by tampering with witnesses or destroying evidence; that he is likely to repeat the same or similar offences;

and grounds of public security. Mr. N. S. MARSH of the United Kingdom added that in England the gravity of the offence (even if it is not likely to be repeated) would be included.

The Committee next directed its attention to the provisions for appeal against the refusal of bail. Mr. E. M. R. CARLTON of the Republic of the Ivory Coast stated that appeal lies with the "Chambre des Mise en Accusation" if provisional liberty is not granted or has not been acted upon within five days of arrest. Mr. J. A. SMITH of Nigeria referred to the Criminal Procedural Code of Nigeria and pointed out that a judge of the High Court may in any case, (before or after conviction) upon application or motion, direct that the accused be admitted to bail.

The CHAIRMAN then requested that the Committee attempt the formulation of certain basic conclusions concerning the question of bail. Mr. W. H. HASTIE of the United States suggested the following formulation:

"Except in cases of very grave offences, courts and magistrates do and should exercise at least discretionary power to permit an accused person to be or remain at large pending trial. This is a judicial function which should not be subjected to executive control although a court should hear and give consideration to the views of the Executive. Whether by appeal or by independent application a High Court may allow bail after denial by a lower court."

With respect to the question of bail after conviction Mr. A. RAZAQ of Nigeria put forward the suggestion that this should be at the discretion of the court, but he queried whether the court should limit itself to exceptional circumstances. On this point Mr. P. CHARLES of Southern Rhodesia was of the opinion that the same criteria for granting bail prior to conviction should apply to granting bail after conviction. Mr. W. H. HASTIE of the United States agreed with Mr. Charles, but Mr. L. BRETT of Nigeria cautioned that this must be at the complete discretion of the court and not operate as an automatic right.

In conclusion of this session, Mr. S. J. MAYAKI of Nigeria received further explanation from Professor Schwartz on the subject of the extended use of the summons as dispensing with the occasion for bail and suggested this instrument as an ideal practice to be recommended by the Committee. Mr. A. RAZAQ of Nigeria supported the suggestion with the exception of cases involving very serious offences.

At this point, having concluded discussion of Question No. 4, the CHAIRMAN suggested that the Committee bring the session to a close for the day and that the agreements reached therein be taken up by the Drafting Committee.

**Wednesday, January 4, 1961**

09.00—12.00

As agreed in the opening session the Committee turned to Questions No. 2 and No. 3, the substance of which is set forth immediately below:

“2. What, if any, are the circumstances in which it is possible for a person to be deprived of his liberty on grounds of public security other than on a charge of a specific criminal offence.

3 (a) If there are such circumstances, what is in this context the interpretation of “public security” by the authorities.

(b) Whether public security in this context is defined by law.

(c) Whether it is interpreted by the courts by means of review or otherwise.

(d) Whether detention of this kind is consequent upon judicial trial or whether there can be an appeal to a judicial authority.”

Mr. S. WARUHIU of Kenya stated that apart from specific charges in accordance with criminal law there are the following grounds for deprivation of liberty under the laws of Kenya: first, a person under the age of 21 may be deprived of personal liberty for the purpose of education and welfare; second, for the purpose of preventing the spread of infectious or contagious diseases or in the case of persons who are, or are reasonably expected to be, of unsound mind, addicted to drugs or alcohol or vagrance, for the purpose of their care or treatment or the protection of the community; thirdly, for the purpose of preventing the unlawful entry of a person into Kenya or for the purpose of effecting lawful expulsion, extradition or other lawful removal from Kenya of a person, or the taking of proceedings relating thereto, or for the purpose of taking proceedings relating to the imposition of any order prohibiting that person from entering or from leaving any area in Kenya, or for the purpose of securing the enforcement of any such order or any condition contained in any order suspending such an order, as mentioned heretofore.

Mr. G. C. NONYELU of Nigeria pointed out that Section 20 of the Federal Constitution of Nigeria provides for certain circumstances under which a person may be deprived of personal liberty other than on a specific criminal charge as follows:

(a) In consequence of his unfitness to plead to a criminal charge in the execution of the sentence or order of a court in respect of a criminal offence.

(b) By reason of his failure to comply with the order of a court and in order to secure the fulfilment of any obligations imposed upon him by law.



(c) For the purpose of bringing him before a court in execution of an order of the court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence.

(d) In the case of a person who has not attained the age of 21, for the purpose of his education and welfare, and in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrancy, for the purpose of their care or treatment or for the protection of the community.

(f) For the purpose of preventing the unlawful entry of any person into Nigeria or for the purpose of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings related thereto.

Mr. P. CHARLES of Southern Rhodesia felt that the most important problem to be considered by the Committee was the extent to which the ordinary rights of individual liberty may be abrogated in times of emergency and what check should exist against the abuse of emergency powers. Mr. Charles referred to the Southern Rhodesian Act No. 48 of 1960 providing for a declaration of a state of emergency by the Governor in times of danger when action has been taken, or is threatened, so as to endanger public order and safety or interfere with the maintenance of any essential service. In addition, Mr. Charles discussed the 1959 Preventive Detention Act, which he thought to be modelled on the legislation of Ghana, and which operates to maintain public safety even when a time of emergency does not exist. Mr. Charles suggested that the Committee should also consider as fundamental questions to what extent ordinary freedoms can be interfered with in the interest of public security and the validity of the argument that such action is exceptional and is needed because of a threat to the security of the state. Mr. Charles emphasized that he was thinking of non-emergency situations and stated further that there was no state of emergency in Southern Rhodesia at the time. Chief A. PREST of Nigeria reiterated the Committee's concern about deprivation of personal liberty when no officially declared state of emergency exists, as for example under the Southern Rhodesian and Ghanaian legislation referred to earlier.

Mr. Koi LARBI of Ghana made specific reference to the Preventive Detention Act of 1958 which he distinguished from the legislation of Southern Rhodesia because the former Act makes no provision for review by a tribunal. Mr. Koi Larbi also emphasized that there has not been any state of emergency in Ghana since 1958, but, he said, people have still been detained under the Act. Mr. de GRAFT JOHNSON of Ghana, drawing a distinction between public order and public security, pointed out that the Ghanaian legislation fails to give a clear definition of public security. Mr. Johnson also affirmed that at the moment there could be no ground for declaring a state of emergency in Ghana. Mr. Johnson pointed

out that the courts of Ghana cannot investigate the grounds or reasonableness of an executive decision concerning preventive detention, but simply determine whether the power exercised falls within the terms of the legislation and is exercised in good faith. Mr. Johnson felt that the legislation is very wide-sweeping and, in fact, gives the Executive unlimited power to put an individual in custody by the mere allegation that his presence or activities are prejudicial to public security. Mr. G. M. BOYO of Nigeria summarised the general agreement of the Committee that no man should be so deprived of his personal liberty except in time of a public emergency.

On the part of one of the French-speaking countries of Africa, Mr. M'Pé BENGALY of Mali drew a distinction between *ordre publique* and *securité publique* and made clear that under normal conditions in his country there could be no detention other than through judicial process. Mr. Bengaly supported the principle that deprivation of liberty must only occur in the event of an "état d'exception" (i.e. state of emergency). The RAPPORTEUR noted that, unlike Mali, and most of the French-speaking African states, Togo had determined not to establish a Constitution immediately. The RAPPORTEUR pointed out that in the retention of the previously existing legal system, the organs of the Executive continue to have the power for reasons of public security (or political order) to detain a Togolese citizen by administrative action and authority.

Mr. S. K. MAYAKI of Nigeria emphasized that under the Nigerian Constitution only in a situation of emergency can a man be deprived of his liberty on grounds of public security. Mr. G. C. M. ONYIUKÉ of Nigeria stated that in his estimation the very basis of the Committee's discussion was to determine whether it is consistent with the Rule of Law for a person to be detained in circumstances not amounting to an emergency. The CHAIRMAN added at this point that the situation where no emergency exists is exactly the matter which the Committee wished to deal with and that subsequently there would be an opportunity to discuss the nature of emergency situations.

Mr. Koi LARBI of Ghana proposed that the Committee adopt the basic principle that where there is no emergency, or no emergency proclaimed, preventive detention cannot be used at all. Mr. N. MARSH of the United Kingdom pointed out that if all were in agreement to the foregoing proposal it would not be necessary to treat Question No. 3 at this time.

Mr. W. H. HASTIE of the United States asked whether the Committee was addressing itself merely to cases of detention amounting to imprisonment. Mr. G. M. BOYO of Nigeria replied that detention should also include partial deprivation of liberty (e.g., banishment, restriction to a particular area, house arrest, etc.). Mr. P. CHARLES of Southern Rhodesia warned that there may be times when partial deprivation of liberty, in particular banishment from a specific area, may be necessary in the interest of public order.

Mr. CHARLES then asked the Committee to pronounce unequivocally its agreement that there should be no detention in times not amounting to an emergency except on recognized grounds of public health or on conviction by an ordinary court for an offence against a law which has been promulgated in advance and has been proved by the ordinary process of law. Chief A. PREST of Nigeria was in complete agreement with Mr. Charles, but reasserted the point that the Committee's conclusion should apply to any deprivation of liberty whatsoever. Mr. Koi LARBI of Ghana concurred with Chief Prest, as did also Mr. A. RAZAQ of Nigeria. M. B. d'ALMEIDA of Dahomey requested that the Committee give its unanimous recommendation that encroachment upon the liberty of an individual should not be authorised except in time of war or emergency, which should be verified by a legislative body.

Mr. M. ROLLAND of France pointed out that as Question No. 1 dealt with the particular aspects of partial deprivation of liberty it would be most suitable that these be considered next. Mr. L. BRETT of Nigeria seconded the suggestion of Mr. Rolland. The CHAIRMAN then put the suggestion to the Committee and it was agreed to take up Question No. 1 at the next Committee session and subsequently, if time permitted, to return to an examination of certain factors pertaining to emergency situations.

**Wednesday, January 4, 1961**

15.00—18.00

As agreed at the close of the morning session, the Committee proceeded to examine Question No. 1, the text of which is set forth immediately below:

"1. The extent to which the following activities of the Executive are subject to review in the courts:

- (a) restraints imposed on freedom of assembly;
- (b) deprivation of liberties under licence or other form of permission to carry on any lawful calling;
- (c) refusal under licencing control to permit the pursuit of any lawful calling;
- (d) deprivation of citizenship;
- (e) deportation of aliens;
- (f) restraints imposed by seizure or ban on freedom of literary expression;
- (g) acts interfering with freedom to travel within or outside the country;
- (h) compulsory acquisition of privately-owned property without adequate compensation;
- (i) interference with any rights guaranteed by the Constitution."

Commencing with sub-section (a) concerning restraints imposed upon freedom of assembly Mr. L. BRETT of Nigeria pointed out

that review by the courts would operate in Nigeria because freedom of assembly is provided for in Section 25 of the Constitution which also provides that nothing in that section shall invalidate any law reasonably justifiable in a democratic society. Mr. Brett felt it was clear that the question whether any law in connection with freedom of assembly (and an executive act thereunder) was reasonably justifiable in a democratic society would therefore be subject to judicial review. Mr. E. V. C. de GRAFT JOHNSON of Ghana stated that in his country there is in fact hardly any redress at all if a police authority refuses to grant permission for a meeting or procession. Mr. Johnson indicated that the only redress available is the force of public opinion.

Mr. N. MARSH of the United Kingdom, referring to his paper as submitted to the Conference, said that in the United Kingdom many decisions as to the effective use of the right of assembly cannot come before the courts at all because the facilities for holding a meeting lie within a public body which is not answerable under any general principles of a Constitution as to the way in which it makes a decision. As an example Mr. Marsh explained that the Town Council may have the only public hall in the town but nothing except public opinion can decide whether they grant the use thereof to one group or another.

Mr. P. CHARLES of Southern Rhodesia revealed that under the law of his country, restrictions on the holding of public meetings and processions are imposed under Law and Order Maintenance Act No. 53 of 1960. In particular, processions may be prohibited if a regulating authority, which may be a police officer or an official, is of the opinion that the procession is likely to cause a breach of the peace or public disorder. A regulating authority may issue regulations in the district for which it is responsible requiring written notice of the meetings to be given to the authority specifying the date, the time, the place and the purpose of the meeting. Then there is a power in the magistrates and the minister responsible for the administration of the Act to prohibit meetings where they believe that serious public disorder may be caused by the holding of these meetings. There is no effective judicial control over the exercise of these powers, although theoretically they would be subject to review on the common law grounds that the authority concerned had acted *mala fide* or had not applied its mind to the question. Mr. P. Charles added that any police officer who has reasonable grounds for believing a breach of the peace is likely to occur or that public disorder is likely to be occasioned may call on a meeting of three or more people to disperse and after he has followed the prescribed procedure, if the people gathered do not disperse, they are deemed to constitute an unlawful gathering and the individuals concerned commit an offence for which serious penalties are prescribed by continuing to be gathered together, and the police may use what force is necessary to disperse them. In addition, Mr.

Charles pointed out that the police have the power in the exercise of the preventive power to forbid any person from addressing a gathering and to enter and remain on premises, including private premises, at which three or more persons are gathered whenever they have reasonable grounds for believing that a breach of the peace is likely to occur, or that a seditious or subversive statement is likely to be made. These powers are not subject to judicial review but if the powers were abused, in that the police purported to exercise the powers without having the reasonable ground for believing that the conditions exist justify the use of those powers, action for damages could be brought against the police officer responsible. Mr. S. WARUHIU of Kenya stated that the law of Kenya is a carbon copy of the law prevailing in Nigeria.

Mr. N. MARSH of the United Kingdom asked the question of those with experience with respect to the African situation as to whether the power of the local authority to give permission for meetings to be held in a particular hall would be subject to non-discrimination clauses in the Constitution itself. Mr. S. J. MAYAKI of Nigeria stated that in nine cases out of ten the action of the police is not subject to court review. He pointed out that there is, therefore, some difference between a provision of the Constitution and the actual practice in Nigeria. Mr. Mayaki stated further that he felt it desirable that the powers of the police be reduced to the barest minimum if the full benefits of the provision in Section 25 of the Nigerian Constitution are to be enjoyed. Mr. M'Pé BENGALY of the Republic of Mali stated that under the Constitution freedom of assembly and refusal thereof must be by an official administrative act which is subject to review by an administrative tribunal. The RAPPORTEUR stated that no judicial authority can disturb the administrative decision concerning a meeting. The Rapporteur stated further that in the case of joint property-holding one of the owners may be opposed to the holding of a meeting thereon and by making his objection known to the police can cause the police to restrain said meeting on grounds of possible public disorder with no judicial or further administrative review of this decision. Mr. W. H. HASTIE of the United States said that in the United States it is difficult to imagine a situation in which an executive restriction on the privilege of assembly could not be examined by a court. Mr. Hastie added that in his opinion the Committee should concern itself with how far executive denial of freedom of association is subject to review by the courts. Mr. KOI LARBI of Ghana also evinced a positive interest in treating this aspect of the question of freedom of association.

Mr. P. CHARLES of Southern Rhodesia referred to the Unlawful Organisations Act No. 38 of 1959 and commented that there is no test in the courts as to the opinion of the Governor who, acting upon advice from the Cabinet has the power to declare unlawful an organisation if it appears to the Governor that the activities of such an organisation or any of its members are likely to endanger public

safety, to disturb or interfere with public order or to prejudice the tranquillity or security of the colony, or are dangerous or prejudicial to peace, good order or constitutional government or are likely to raise disaffection among the inhabitants of the colony or promote feelings of ill-will and hostility between the different races of the population in the colony, or that the organisations are controlled by or affiliated to, or participate in the activities of, or promote the objects of certain named organisations outside Southern Rhodesia. Mr. Charles concluded that there is no test in the courts as to the validity of the opinion of the Governor and it is specifically provided in the legislation that no action or other legal proceedings should be brought in any court of law against the Governor, any member of the Executive Council, any parliamentary secretary, public employee or policeman or anyone acting in good faith under their directions. Mr. S. J. MAYAKI of Nigeria asked Mr. Charles whether in practice the doctrine of good faith could be used as a basis of subjecting the activities of the Executive to judicial review in Southern Rhodesia. Mr. P. CHARLES of Southern Rhodesia replied that although the theoretical rights exists, in practice it is valueless. Mr. A. RAZAQ of Nigeria added that freedom of association like freedom of assembly is provided for by Section 25 of the Constitution and that restriction thereof could be challenged in court.

Mr. N. MARSH of the United Kingdom suggested that the Committee consider a recommendation that all restraints upon freedom of association and assembly and the reason for these restraints should be ultimately subject to review by the courts. Chief A. PREST of Nigeria supported Mr. Marsh's recommendation with the exception of the time of a state of emergency. Mr. W. HASTIE of the United States strongly suggested that judicial review of executive action is just as desirable in a state of emergency. Mr. Hastie expressed the hope that, short of actual martial law or the supercession of the ordinary civil process, judicial review would be considered as appropriate in a state of emergency when the question is one of the propriety of an executive restriction on freedom of association. Mr. L. BRETT of Nigeria felt that to say that the members of the Executive responsible for law and order may do nothing until the courts have approved in advance the proposed measures would be too restrictive. Mr. Brett agreed, however, that in any event the Executive must be prepared to justify in court that the measures taken are reasonable. The Committee then agreed to the desirability of judicial review of executive restriction upon freedom of assembly and determined that a statement to this effect should be formulated by the Drafting Committee.

The Committee next turned its attention to subjects (b) and (c) concerning licensing.

Mr. P. CHARLES of Southern Rhodesia requested the opportunity of speaking first on this subject. He pointed out that licensing of trades and business is in the hands of the licensing authority with

an appeal to the High Court and that there is no provision for taking away a licence once granted except on grounds of danger to public health. Mr. Charles added that liquor licensing is in the hands of the liquor licensing authority and can only be taken away in the event of a contravention of the liquor law which must be established by prosecution in court. Mr. Charles explained that professional licences are, in the case of the legal profession, subject to control by the High Court, and in the case of other professions such as the medical profession, in the hands of professional bodies who have to apply judicial inquiry before they can take disciplinary action, and although there was no specific appeal to the High Court from these professional bodies, their decisions would be subject to review if they exceeded their power or acted in any way irregularly.

Mr. G. C. NONYELU of Nigeria stated that in Nigeria there are two categories of licences; the first, granted to the professions such as law and medicine, are controlled by a disciplinary committee from which there lies appeal to the High Court. The other category of licences for bars, moneylenders, cinemas, etc., are dealt with by their respective boards, which are again subject to High Court appeal. Mr. Nonyelu explained that the appeal to the High Court in both categories of licences is secured by Section 31 of the Constitution which concerns Fundamental Human Rights. The RAPPORTEUR indicated that at present in Togo it would be possible for an administrative authority to refuse a licence to do business without being required to give its reasons, and without the possibility of subsequent recourse to the courts.

Mr. G. C. M. ONYIUKE of Nigeria asked the Committee whether the question of discrimination should not be considered in connection with the deprivation of liberties and refusal of licences. Mr. A. RAZAQ of Nigeria supported the suggestion of Mr. Onyiuke and pointed out that judicial review would be of an act which has laid down certain reasons for granting or refusal of licence. Mr. Razaq stressed that if in the initial stage the act involved is only applicable to a certain section of the community then the section to which it does not apply cannot conveniently challenge it on the ground that it is discriminatory. Mr. C. M. BOYO and Mr. S. J. MAYAKI of Nigeria were in agreement that the problem of discriminatory legislation should be treated by this Committee although there was some feeling on the part of other Committee members that this particular subject was outside the initial frame of reference. It was therefore proposed by Mr. N. MARSH of the United Kingdom that the Drafting Committee work out a prefatory statement reflecting the unanimous concern of the Committee about this subject. The RAPPORTEUR seconded the suggestion of Mr. Marsh, and Mr. A. RAZAQ of Nigeria stated that he would be content with a group assertion with respect to discriminatory legislation. Mr. N. MARSH of the United Kingdom then suggested that the Drafting Committee refer to the Conclusions adopted by the First Committee

of the International Congress of Jurists in New Delhi in 1959. At this point it was agreed to adjourn for the day and continue discussion of Question No. 1 at the next Committee meeting with the request that the Drafting Committee prepare a statement on discriminatory legislation for consideration the following day.

**Thursday, January 5, 1961**

09.00—12.00

The CHAIRMAN read to the Committee the statement prepared concerning discrimination to the effect that: "This Committee is concerned with the procedural aspects of administrative action of the Executive and judicial review thereof and takes full cognizance of and incorporates by reference Section III sub-section 3(a) of the Conclusions of the First Committee of the International Congress of Jurists in New Delhi, 1959, and recognizes and agrees that legislation authorising administrative action by the Executive shall not discriminate 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." This statement was then accepted by the Committee.

Mr. N. MARSH of the United Kingdom presented the question whether the topic for consideration should not include what is meant by judicial review and the extent thereof when taking up the remaining headings under Question No. 1. The CHAIRMAN formulated the general proposition that all the activities listed under these headings are appropriate for judicial review. Mr. S. J. MAYAKI of Nigeria expressed the opinion on behalf of the Committee that the Chairman's suggestion should be adopted without reserve and that the Committee should next direct its attention to the extent of judicial review desirable.

Mr. W. H. HASTIE of the United States proposed that judicial review should include both appellate and original proceedings. Mr. P. CHARLES then proposed a resolution for adoption by the Committee that while recognizing that inquiry into the merits of administrative questions in many cases may not be appropriate for an ordinary court, it is urged that there should be in every case a form of inquiry by administrative tribunal subject to the overriding authority of ordinary courts if the administrative tribunal exceeds its power or refuses to exercise its powers which it is its duty to exercise or disregards the principles of natural justice or no administrative tribunal exists. Chief A. PREST of Nigeria suggested that the mere indication by an aggrieved party that he intends to take action before the court should be sufficient to suspend the application of administrative order which is questioned until resolved by the courts. Chief Prest felt, however, that this ideal could not be



extended to all the headings under consideration, particularly to freedom of assembly (e.g., procession). Mr. G. C. M. ONYIUKÉ of Nigeria shared the views expressed by Chief Prest but wished the Committee to take full cognizance of the fundamental distinction between the treatment of a national and that of an alien by the Executive in matters such as treason concerning state security.

As the Committee had reached a point of complete agreement concerning Question No. 1, the CHAIRMAN then asked whether it was desired during the remaining time of this Session to consider further the matter of discriminatory legislation and then turn to the question of emergency situations. Mr. P. CHARLES of Southern Rhodesia expressed the opinion that the Committee was fully in accord with the statement concerning discriminatory legislation formulated and read at the opening of this session and proposed that this should be unanimously adopted and included in its Conclusions. The RAPPORTEUR requested that the preamble to the Conclusion of the Second Committee of the International Congress of Jurists in New Delhi should also be incorporated in the Conclusions of this Committee with respect to Africa. The preamble was then read and approved.

Mr. W. H. HASTIE of the United States then turned to the matter of preventive detention in times of emergency and formulated the proposition that legislation often authorises preventive detention of individuals if the Executive finds that public security so requires during a period of authoritatively declared public emergency. Mr. Hastie felt that such legislation should, however, afford the individual a minimum safeguard against continuing arbitrary confinement by requiring an early administrative hearing and decision upon the need and justification for detention with a right of judicial review adequate to test the reasonableness of that decision. Mr. Hastie added that it should be required that any Executive declaration of emergency be reported to and confirmed or disapproved by the Legislature at an early date. Furthermore, said Mr. Hastie, both the declaration of emergency and any consequent detention of individuals should be effective for a stated and reasonably limited period of time, subject to the extension of the period of emergency by the Legislature after deliberate consideration of the necessity therefor. Mr. E. V. C. de GRAFT JOHNSON of Ghana wholly supported the formulation proposed by Mr. Hastie but wished to add there should be at some stage the opportunity for a proper judicial review. Mr. Johnson explained that by a proper judicial review he meant that there should be a limit to the period of time during which a state of emergency could be legitimately declared by the Legislature, which should be specifically delimited and, after the said period of time, the court should be given an opportunity to look into the facts and consider whether the circumstances warrant the continuation of a state of emergency. Mr. W. H. HASTIE of the United States expressed his agreement with Mr. Johnson.

Mr. S. J. MAYAKI of Nigeria was of the opinion that a state of emergency should be limited to a period of 12 months or such shorter period as may be specified provided that a resolution to this effect may be revoked at any time or may be extended from time to time for a further period not exceeding 12 months. Mr. Mayaki also supported the view that a legislative resolution concerning a state of emergency should be subject to judicial review. Mr. Koi LARBI of Ghana expressed the wish that the Committee include in its Conclusions a statement to the effect that no measure shall be taken during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency. It was the general feeling of the meeting that this point should be included in the Conclusions to be drawn up by the Drafting Committee, and, having completed the questions at hand the meeting was then adjourned to allow the Drafting Committee to draw up Conclusions based upon the suggested formulations.

**Friday, January 6, 1961**

09.00—12.00

After reading the draft Conclusions the Committee meeting was formally opened and turned to the question of approval of the text of the Conclusions. The RAPPORTEUR suggested that the preamble should be rearranged in order to present the most general statement first and subsequently the most particular. Chief A. PREST of Nigeria expressed his agreement with the Rapporteur and a motion to this effect was seconded by Mr. E. V. C. de GRAFT JOHNSON. The motion was carried unanimously.

Mr. N. MARSH of the United Kingdom pointed out that while recognizing that inquiry into the propriety of an individual administrative act by the Executive may in many cases not be appropriate for an ordinary court, there should be some form of reasonable inquiry with respect thereto. Secondly, Mr. Marsh suggested that such reasonable inquiry should be available to the person affected or concerned. Finally, Mr. Marsh strongly recommended that a person so aggrieved should be made aware of the full reasons for the action of the executive. Mr. B. D'ALMEIDA of Dahomey stressed the distinction to be recognized under a French Civil Law system between administrative tribunals and ordinary courts. Mr. N. MARSH of the United Kingdom recommended that the Conclusions of the Committee should emphasize that in every instance a reasonable form of inquiry should be available either through a hierarchy of administrative tribunals of independent jurisdiction or, where these do not exist, by the authority of the ordinary courts.

With respect to the question of emergency situations it was suggested by Mr. G. C. NONYELU of Nigeria that Section 65 of the

Constitution of Nigeria, should serve as a basis for the Conclusions of the Committee. Mr. S. J. MAYAKI of Nigeria was in accord with Mr. Nonyelu and was supported in his opinion by Mr. S. WARUHIU of Kenya. Accordingly the Committee voted that an emergency should be authorized for a period not exceeding six months without legislative authorization or continuation.

On the subject of bail Mr. G. S. K. IBINGIRA of Uganda recommended that the words "whenever possible" should be left out of the conclusion that bail is to be commensurate with the economic means of the accused. Mr. N. MARSH of the United Kingdom requested that the Drafting Committee should also add to the Conclusions specific grounds for refusal of bail. Mr. S. J. MAYAKI of Nigeria supported the suggestion of Mr. Marsh. Mr. P. CHARLES of Southern Rhodesia asked that the same grounds for refusal of bail be applied to a demand therefor pending appeal and that it not be necessary for bail pending appeal to be granted only under exceptional circumstances.

Mr. W. HASTIE of the United States moved as an unopposed resolution an expression of the gratitude of the Committee to the CHAIRMAN, the Vice-Chairman, the Rapporteur and the Co-Secretaries for their co-operation and activity during the course of the Committee sessions.

## LIST OF REGISTERED MEMBERS OF COMMITTEE TWO

- Benjamin d'ALMEIDA  
(*Dahomey*)
- M'Pé BENGALY (*Mali*)
- Kwamena BENTSI-ENCHILL  
(*Ghana*)
- C. M. BOYO (*Nigeria*)
- L. BRETT (*Nigeria*)
- Edmond-Maurice  
CARLTON (*Ivory Coast*)
- Peter CHARLES  
(*Southern Rhodesia*)
- Joseph K. Boakye  
DANQUAH (*Ghana*)
- E.V.C. DE GRAFT-JOHNSON  
(*Ghana*)
- Barthélémy DIPUMBA  
(*Congo-Leopoldville*)
- William Henry HASTIE  
(*U.S.A.*)
- John D. HUMPHREY  
(*United Nations*)
- G. S. K. IBINGIRA (*Uganda*)
- Koi LARBI (*Ghana*)
- Laurence LOMBARD  
(*International Bar  
Association*)
- Norman S. MARSH  
(*United Kingdom*)
- S. J. MAYAKI (*Nigeria*)
- Juma MWINDAZI  
(*Tanganyika*)
- G. C. NONYELU (*Nigeria*)
- G. C. M. ONYIUIKE  
(*Nigeria*)
- Chief Arthur PREST  
(*Nigeria*)
- Abdul RAZAQ (*Nigeria*)
- S. S. RICHARDSON  
(*Nigeria*)
- Maurice ROLLAND (*France*)
- A. Ignacio SANTOS (*Togo*)
- Louis B. SCHWARTZ (*USA*)
- A. O. SIKUADE (*Nigeria*)
- J. A. SMITH (*Nigeria*)
- Samuel Njoroge WARUHIU  
(*Kenya*)
- C. D. M. WILDE  
(*International Commission  
of Jurists*)

### COMMITTEE III

#### THE RESPONSIBILITY OF THE JUDICIARY AND OF THE BAR FOR THE PROTECTION OF THE RIGHTS OF THE INDIVIDUAL IN SOCIETY

Chairman: Mr. GEORGES CREPPY (Ivory Coast)  
Vice-Chairman: Mr. JOSEPH POUABOU (Republic of the Congo,  
Brazzaville)  
Rapporteur: Mr. HERBERT CHITEPO (Southern Rhodesia)  
Secretaries: Miss OLIVE TAYLOR (Sierra Leone)  
Mr. PHILIPPE COMTE (Legal Staff, International  
Commission of Jurists)

Tuesday, January 3, 1961

15.00-18.00

The CHAIRMAN outlined the topics to be discussed by COMMITTEE III and emphasized their importance. In general they involved the position of the individual *vis-à-vis* judicial and administrative systems. Although it may at first appear contradictory to present the Judiciary, the authority responsible for punishment, as the protector of the rights of the individual in society, this contradiction is really illusory. The object of the discussions was to show how and under what conditions the Judiciary supported by the bar could assure protection of individual freedom.

At the request of the Chairman, the RAPPORTEUR summarized the essential points contained in the document the text of which is set forth above (see introductory report for Committee III, pp. 69—81).

Before going on to the actual debate, the Chairman called on Mr. DECOTTIGNIES and Sir Patrick DEVLIN to present an outline of the principles of judicial organisation, in countries of French and British tradition respectively.

Mr. DECOTTIGNIES of Senegal recalled that justice is a public service, but a public service of a very special type, as its function is to protect individual rights and to guarantee freedom. In the field of prosecution in particular, the function of the Judiciary is to punish as far as is necessary but no more than is indispensable. Thus, the organization of the courts and the choice of the men to administer them is of the greatest importance. The judicial organization inherited by the new States, from the French colonial regime is very complex. This was due to a triple distinction. In the first place, there was the distinction between local (or customary) courts and French (or modern) courts. The first category had continually developed and at the final stage comprised customary law courts, courts of the first and second degree, higher courts of local law and, as supreme authority, the appeals chamber. In the second place,

with regard to the French (or modern) law courts, a distinction was made between judicial systems and administrative systems, the latter comprising the territorial arbitration councils, with right of appeal to the French Council of State. In the third place, with regard to judicial systems, there was a distinction between penal and civil justice, both being administered by magistrates with limited competence or with extended competence, by courts of first instance and by appeals courts, with the right of appeal to the French Court of Cassation. This system of organization was typified by a veritable fragmentation of the public system of justice, which might have unfortunate effects in young States. For this reason as well as for political reasons, the question of reorganization of the legal system had arisen upon the accession to independence of these States, since full authority in this subject had been transferred to them, whether or not they remained within the Community. There was also the question of recruitment of members of the Judiciary, and the governments concerned were obliged to conclude agreements with France with a view to temporary detachment of French judges in order to undertake the rapid training of African judges. This question itself raised that of the status of judges and all others connected with the carrying out of the judicial process, which is precisely the subject of discussion before the Committee.

Sir Patrick DEVLIN of the United Kingdom proposed to give the members of the Committee with a French-speaking background a broad survey of British judicial organization. The High Court is the pivot of the whole organization. It consists of 35 Justices and has jurisdiction in both civil and penal law for the most important cases. At the higher level there is the Court of Appeal, made up of a civil chamber under the Master of the Rolls and consisting of nine judges (soon to be increased to twelve), with the title of Lord Justice, and a criminal chamber normally under the Lord Chief Justice. The judicial hierarchy is headed by the House of Lords, which meets on appeals lodged against verdicts by the Court of Appeal, and the Judicial Committee of the Privy Council, which deals with appeals against decisions by overseas Supreme Courts. The House of Lords and the Judicial Committee have both civil and criminal jurisdiction but the House of Lords exercises this jurisdiction, and particularly criminal jurisdiction, only in the most difficult cases which are allowed to go to it. At the level of jurisdiction below the High Court, there is only one category of civil courts, the County Courts, having competence for cases involving a sum of less than £ 400, with possibility of appeal to the Court of Appeal. The organization in penal cases is more complex. To begin at the bottom, minor offences are heard by magistrates. The overwhelming majority of magistrates are not lawyers by training and they only serve in a part-time voluntary capacity, sitting never less than two, and usually three or four, on a bench. In large towns, however, this function is performed by a paid magistrate who receives a salary and sits alone:

metropolitan magistrates in London (about 20 or 30) and stipendiary magistrates in the other towns (about a dozen). At the higher level, the quarter sessions consist of a group of magistrates, or in some large towns a professional lawyer called a Recorder, both are assisted by a jury, and their decisions are open to appeal before the Court of Appeal. This organization is peculiar to England; Scotland has an entirely different system.

The CHAIRMAN proposed that discussion be opened on the first Question on the agenda for Committee III, namely:

"1. Existing legal provisions or established practice safeguarding the independence of the Judiciary in matters of

- (a) appointments of Judges;
- (b) tenure, with particular regard to possible interference by the Legislative and/or Executive;
- (c) dismissal."

Mr. BERTHAN-MACAULEY of Sierra Leone said that in his country there are two systems of jurisdiction. There are the systems of jurisdiction copied from the British model as outlined by Sir Patrick Devlin, and there are the native courts. The origin of the latter was the tribal institution of the council of elders presided over by the chief which existed long before colonisation and which the British administration retained. The native courts have a very extensive competence in penal matters and exercise jurisdiction over the greater part of the population, so that they occupy a much more important place than the British type of court. They come under the Ministry of Internal Affairs and the judges are appointed by chiefs and district commissioners, who are officers of the Executive, and who supervise and have the power to dismiss the judges. Thus these courts, notwithstanding their very considerable jurisdiction, are entirely subordinate to the Executive.

Mr. Victor KANGA of Cameroun, explaining the principles of judicial organization in Cameroun, stated that the President of the Republic is the safeguard of judicial independence and presides over the *Conseil supérieur de la magistrature* (Higher Council of Magistrature) the composition and functions of which are laid down in legislation. There are other acts of legislation which fix the rules of judicial organization and the status of judges. The Constitution stipulates that the Judiciary is the guardian of individual freedom and private property and that no one can be arbitrarily detained. The *Conseil supérieur de la magistrature* appoints judges, who are irremovable, and has sole competence to decide questions relating to their promotion, transfer or dismissal. Prosecuting judges are appointed by the Council of Ministers in accordance with the proposals of the Minister of Justice. With regard to the general structure of the legal system, the basic element consists of the courts of first instance, made up of a civil and a penal chamber, to which

the competence of the former customary law courts is being progressively transferred. At the higher level there are the three Courts of Appeal, one for each of the regions, North, West and South. Parallel to these judicial courts, there is a further authority known as the State Tribunal responsible for appeals against administrative decisions. The Supreme Court, which has recently been set up, is the highest authority. It consists of an appeals chamber to which disputed decisions of the appeals courts can be referred, an audit chamber which supervises public statements of accounts and an administrative chamber which decides cases either as a first and final appeal authority, or as the appeal authority against decisions by the State Tribunal.

Mr. Lucien YAPOBI of the Ivory Coast stated that, under the Constitution of his country, judges are appointed by decree of the President of the Republic upon the recommendation of the Council of Ministers and in accordance with findings expressed by the *Conseil supérieur de la magistrature*, which is composed of the Supreme Court in plenary assembly. The Act concerning establishment of the Supreme Court is still being drafted, but it is intended that, as in several neighbouring States, it should consist of an appeals chamber, a constitutional chamber, an audit chamber and an administrative chamber. The national laws also state the principle that judges, including investigating judges, are irremovable, thereby guaranteeing their tenure of office and total independence with regard to the authorities competent for their appointment. Dismissal of judges is the responsibility of the *Conseil supérieur de la magistrature*. Thus it is an authority composed solely of judges that possesses total disciplinary power.

Mr. Hugh MITCHLEY of Northern Rhodesia regretted that neither the principles of judicial organization described by the previous speaker nor the British system outlined by Sir Patrick Devlin operate in the British territories of East Africa. In those countries, the Judiciary is still distinctly subordinate to the Executive. In Northern Rhodesia, the appointment and dismissal of magistrates, who are career lawyers with extensive competence in civil matters and even more so in penal questions, are exercised at the discretion of the Governor-General. They are considered to be public officials and as such they can be transferred or dismissed. In addition to those systems there are also several parallel hierarchies of courts under persons without any legal training. In the first place, there are the courts of provincial commissioners, district commissioners, district officers and assistant district officers, all officials of the Executive who thus perform both judicial and administrative functions. There are then the various orders of African courts of first instance and of appeal, with customary law competence before which qualified lawyers are not even authorized to appear. At the higher level there is the High Court, whose decisions are open to appeal to the Federal Supreme Court. A recent legislative provision



provided High Court judges with firm guarantees of stability but delicate problems still arise with regard to the recruitment of judges; judges are therefore officials of the Colonial Office who were generally previously employed in the capacity of attorney-general or solicitor-general in other territories, whose knowledge of local conditions is therefore limited and whose training is primarily along the lines of public prosecution.

Mr. Edouard MONVILLE of Senegal explained that judicial organization in Senegal is based on the same principles as in the Ivory Coast. During the solemn meeting during which the Supreme Court was installed and which was attended by the President of the Republic and the Minister of Justice, the first President of the Court, Mr. Isaac FORSTER, a member of the International Commission of Jurists, addressed these words to the members of Parliament and judges foregathered there: "If your laws are badly made, we shall annul them; if your verdicts are not well founded, we shall quash them; I tell you this publicly, in order that it may be known that in Senegal law comes before politics". The fact that a judge of such stature was able to address the highest dignitaries of the State in such terms is evidence of the degree of independence of the Judiciary in Senegal. Recruitment of judges is through detachment of French judges under technical assistance agreements and through training of African jurists at the Faculty of Law at Dakar.

Mr. Jean KRÉHER of France recalled certain general principles on which agreement had been reached at the New Delhi Congress. First of all, the independence of judges is an essential condition for the existence of a free society under the Rule of Law. This implies that judges must be recruited under conditions guaranteeing their professional competence. Judges must enjoy a situation which defines in a precise manner their conditions of appointment, promotion and dismissal. There were discussions at New Delhi of the various systems of appointing judges; the system of election and the system of nomination by the Legislature did not receive much support. The choice remained open between appointment by the Executive and co-opting by judges themselves. The majority were in favour of a combined system in which the Executive and Judiciary both participate. This idea was realized in France and in some African countries with a French tradition through the institution of a *Conseil supérieur de la magistrature*. The judge must be irremovable, enjoying the guarantee of remaining in his post until an age limit which is stipulated in advance.

Mr. Christian CASSELL of Liberia stated that the purpose of discussion should be to diagnose the shortcomings of the various judicial systems in order to submit recommendations to the competent authorities so that such shortcomings might be overcome. These systems should be evaluated on the basis of standards fixed under the Declaration of Delhi, the essential point being that there must be the fullest degree of independence for the Judiciary.

Mr. Abu RANNAT of Sudan said that in his country all courts come under the direct authority of the Chief Justice. There are three forms of courts: the ordinary courts, the Moslem courts and the native courts. The ordinary courts follow the principles of the British system: at the top an Appeal Court and the High Court, the judges being appointed by the Head of State upon recommendation by the Chief Justice; at a lower level, district judges have civil competence and magistrates have penal competence. Appeals against decisions by native courts lie with the magistrates. The district judges, magistrates and presidents of native courts are appointed by the Chief Justice, whose authority thus extends to all members of the Judiciary.

Mr. Anthony MITCHLEY of Northern Rhodesia stressed the contrast between judicial organization in England and in the colonies and expressed his surprise at the fact that the Judiciary which enjoys such independence and prestige in England should be treated as a mere branch of the administration in the colonies. In Northern Rhodesia, for example, the Government has a degree of control over judges because it is responsible for their promotion and use. It is regrettable that judges in his country do not possess full professional competence; a fact which damages the reputation of the Judiciary.

Mr. Herbert CHITEPO of Southern Rhodesia stated that in the territories remaining under British control members of the Judiciary are appointed by the Executive and regarded as ordinary officials. He wanted to know how the countries with a British tradition which had recently become independent have managed to overcome this contradiction.

Mr. Joseph POUABOU of Congo - Brazzaville said that the independence of the Judiciary *vis-à-vis* the Executive and the Legislature might be regarded either as mere tolerance or as a constitutional rule. He expressed the wish that the new African States follow the French model and include the principle of separation of powers in their constitutions. In order that judges should be truly independent they must be ensured a basic standard of living.

Mr. Udo UDOMA of Nigeria replying to the concern expressed by Mr. Chitepo, explained that there are definite guarantees of the independence of judges in Nigeria. Section 104 of the Federal Constitution provides for the establishment of a Judicial Service Commission, responsible for selecting and appointing judges to serve on the Federal Supreme Court. The constitutions of the three regions also provide for a Judicial Service Commission to be set up in each region. Only lawyers with at least ten years' practice can be appointed to judicial posts. The effect of these provisions is to eliminate any possible political factor. The weak point still remains the method of appointment of customary court judges, who have no legal training and only very limited competence. The members of the Judicial Service Commissions in each Region are for the most part active or retired judges.

Mr. Alexis DÉDÉ of Congo – Leopoldville stated that the Basic Law of the Congo provided for two forms of legal system: the ordinary law courts, inspired by the Belgian model, which meant the French system, and the customary law or native courts. For the former, both at the level of the provinces and at the level of the Federation, independence of judges is firmly guaranteed by methods of appointment and promotion and the rule of irremovability. For the native courts, only very incomplete and fragmentary provisions exist.

Mr. G. K. J. AMACHREE of Nigeria recalled that only a few years ago an official without legal training could still be appointed a judge for a provincial court in Nigeria. One of the principal concerns of the Nigerian Government, even before the declaration of independence, was to separate the legal and administrative systems, which explains the institution of the Judicial Service Commissions at the level of the Federation and of each of the regions. Although these Commissions include representatives of the administration, the judges are in the majority. The regulations governing dismissal of judges require extremely rigorous conditions, to be applied in such instances, and the final decision lies with the Queen or with the Judicial Committee of the Privy Council. There are also budgetary regulations to guarantee the safety of judges' salaries.

**Wednesday, January 4, 1961**

09.00–12.00

Mr. G. K. J. AMACHREE of Nigeria wished to add a few words to his statement of the previous day concerning the Judicial Service Commission of the Federation. He pointed out that all its members were required to be lawyers.

Mr. Amadou KANE of Mali stated that Section 42 of the Constitution of September 22, 1960 of the Republic of Mali ensures and guarantees independence of the Judiciary. The judicial jurisdiction is separated from the administrative jurisdiction. The judicial jurisdiction is made up of the Bamako court of appeal, three courts of first instance, at Kayes, Ségou and Mopti, together with sections of those courts, and magistrates with extensive competence. A court of cassation is shortly to be established. Administrative cases come under the State Court, composed of constitutional, litigation and financial sections; members are appointed for a period of five years and enjoy real independence *vis-à-vis* the Executive.

Mr. Edouard MONVILLE of Senegal emphasized the importance of customary law courts, which are organized on a complex system in his country. The basic instance is the first-degree court, composed of well-known local personalities and having jurisdiction in local civil cases. Next in the hierarchy are the second-degree courts,

which heard in the first instance cases where the sum involved exceeds 6,000 francs C.F.A. Above these courts there are the higher local law court under a career magistrate assisted by assessors acquainted with customary law. There is also an appeals court which is at present the Supreme Court. That organization provides no system of guarantee to those appearing before the courts and is due for complete reform. The customary law courts are to disappear in favour of modern-law magistrates, the office to be held by persons having had an accelerated legal training.

Mr. Herbert CHITEPO of Southern Rhodesia suggested that at that juncture the Committee should go over the points on which unanimous agreement had been reached in the form of a draft resolution to be drawn up by a drafting committee and subsequently transmitted to the plenary session of the Conference. Mr. Jean KRÉHER of France felt that the committee now in session constituted too large a gathering to undertake the drafting of a text and proposed that this first be done by a small group. Mr. BERTHAN-MACAULEY of Sierra Leone and Mr. Amadou KANE of Mali supported the view of Mr. Kréher.

Mr. CHITEPO returned to the question of customary law courts and stressed his belief that the Committee should express its disapproval of a system common to many territories still under British rule, whereby important judicial functions are vested in officials of the colonial administration having no legal training. Mr. Israel MAISELS of South Africa supported this view.

Mr. Vivian BOSE of India stated that in India the ordinary courts hear customary law cases. Mr. Christian CASSELL of Liberia suggested that the Committee should condemn intrusions by the Executive in the course of justice, which happens all too frequently in many countries. Mr. Udo UDOMA of Nigeria proposed that the principles followed in the appointment of judges should also apply to the appointment of native-court magistrates. Mr. Ahmed ATABANI of Sudan wished a clear definition to be made of the term "Judiciary". In his opinion, the Judiciary covers all the authorities responsible for the administration of justice, which means the customary law courts no less than the ordinary courts, so that both should enjoy the same guarantees of independence.

Sir Arku KORSAH of Ghana recalled that in the former Gold Coast the British administration had set up two quite distinct forms of courts: the English-law courts and the native-law courts. Such an arrangement corresponded to the colonial system. In 1951 a Commission had proposed that the native-law courts, of which there were at the time some 300, be placed under the authority of the Chief Justice, and upon Ghana's accession to independence the judicial organization was entirely reformed and standardized. Application of local common law now comes under all courts and if necessary an expert can be consulted if the point at dispute has not been previously fixed by jurisprudence. The highest judicial authority is the

High Court and the Supreme Court as appeal authority; at the lower levels there are the circuit courts comparable to the English county courts, with district magistrates who are professional Lawyers and the local magistrates who, although not always possessing any legal training, provide substantial guarantee of experience and good faith within their limited field of competence. Thus, Ghana has a single legal body, under the authority of the Chief Justice. Justice is entirely separated from and independent of the administration, and the Chief Justice is responsible directly to the President. The Chief Justice submits proposed appointments of judges for signature by the President. In brief, judicial organization in Ghana is a very faithful copy of the English model and there are very satisfactory guarantees of an independent judiciary.

Mr. DECOTTIGNIES of Senegal stressed the necessity of dealing separately with the problem of judicial organization and that of an independent Judiciary, the latter being the essential function of the Committee. Mr. Victor KANGA of Cameroun recalled that his country had endeavoured to unify legal provisions by including the customary law courts within the ordinary jurisdiction. Mr. Edouard MONVILLE of Senegal felt that the principle of uniformity of law needed to be stated: a modern society must have a modern legal system equal for all citizens. The consequence should therefore be for customary law judges to be brought within the framework of the Judiciary after having received appropriate training.

Sir Adetokunbo ADEMOLA of Nigeria referred again to the question of customary law courts and mentioned that in Nigeria the magistrates of those courts in the northern region were appointed by the Judicial Service Commission, thus ensuring unity in the legal system. Regarding the general question of the method of appointment of judges, he considered it dangerous to leave the decision to one man, even if it were the Chief Justice and stated his preference for the Nigerian system which gives competence in this connection to a joint authority independent of the Executive. It is also essential that the appointment of members of the Judicial Service Commission should not be left to the discretion of the Executive. Under its present system of organization, the Commission consists of four members: the Chief Justice as chairman, a judge appointed by the Prime Minister, the Chairman of the Public Service Commission and a judge serving or having served in any member country of Her Majesty's Dominions.

Mr. Eli W. DEBEVOISE of the United States discussed the system existing in the United States for appointment of federal court judges. The President of the United States consults the Attorney-General and the Chief Justice and proposes a candidate, who must be approved by a two-thirds majority of the Senate. This system provides for participation of all three branches in the process of appointment. Sir Adetokunbo A. ADEMOLA of Nigeria believed that such a system might be satisfactory in countries where judicial in-

stitutions are strongly established, but it would be dangerous in the new African States to introduce the Legislature into such a matter. Mr. Fatayi WILLIAMS of Nigeria stated that in the western region of Nigeria integration of the customary law court judges had met with serious practical difficulties: in that region alone there were some 600 judges and that is a delicate situation for the Judicial Service Commission to cope with.

The CHAIRMAN proposed that discussion be closed on the first question on the agenda and that the Committee proceed to Questions 4 and 6, leaving aside Questions 2 and 3 for the time being. The wording of Questions 4 and 6 was as follows:

“4 (a) The extent to which the legal profession as an organized body is free to manage its own affairs.

(b) Other bodies which exercise or share supervisory powers over the legal profession and the effect of such interference on the independence of the Bar.

6 The general standing of the Judiciary and of the Bar in the community and their out-of-court assistance to the Legislative and Executive in upholding and strengthening the Rule of Law.

In reply to an observation by Mr. Hugh MITCHLEY, Mr. Herbert CHITEPO of Southern Rhodesia and Mr. BERTHAN-MACAULEY of Sierra Leone stressed that Committee III should abstain from interfering in the work of the two other Committees and remain within the scope of the subject assigned to it, namely consideration of ways in which the bar can contribute to protection of individual rights and maintenance of the Rule of Law.

Mr. DECOTTIGNIES of Senegal pointed out the diversity of possible concepts of bar organization. Remaining within the frame of reference of countries having a French tradition, defence before customary law courts was entirely open; in Guinea the profession of barrister has been made a public function; in many countries defending counsel are ministerial officers appointed by the government. For some years past, bar institutions on the French model have been created, such being the case in Malagasy Republic since 1957, in the Ivory Coast since 1959 and in Senegal since 1960.

Sir Arku KORSAH of Ghana expressed the hope that contact could be established between members of the bar of different countries in West Africa and that common rules could be drafted for adoption in each of those countries. Above all, however, he believed that lawyers should be locally trained in African law schools.

Mr. Edouard MONVILLE of Senegal believed the Committee should affirm the principle of independence of the Bar *vis-à-vis* the public authorities. In three French speaking countries (Malagasy Republic, Ivory Coast and Senegal), this independence is now guaranteed and lawyers grouped in bars administered by a Council of the Order

maintain their own discipline. Legislation in Senegal is particularly liberal, and if any incident occurs during a hearing the court prepares a report for transmission to the Council of the Order before taking any sanction against the lawyer. This solution is not possible, however, unless there are enough lawyers to constitute an order and a Council of that Order. That is not the case in most States, which must therefore find a means of guaranteeing the independence of lawyers notwithstanding the absence of an organized bar.

Mr. Anthony MITCHLEY of Northern Rhodesia stated that in his country the same persons act as barrister and solicitor, which is harmful to the authority and independence of the bar. Most legal practitioners are too absorbed by their office work to be much concerned with the general principles of justice. Many are essentially occupied in the service of major corporations whose interests they must preserve. Without going to the extent of separating the two professions, it is both possible and desirable to set up a bar association whose activities would be directed towards the study of legislative questions. One of the essential functions of the bar would be to follow the work of the legislative organs and to organize resistance to any bills considered contrary to individual freedom and the general principles of law.

Mr. Ahmad ATABANI of Sudan also stressed the importance of independence of the bar. In Sudan the law entrusts discipline of the legal profession to a Bar Committee composed of the Chief Justice, the Attorney-General and the President of the Bar Association. That authority deals with requests for admission to the bar, arranges for any disciplinary measures and adopts regulations concerning the exercise of the profession.

Mr. BERTHAN-MACAULEY of Sierra Leone believed that lawyers should not be exposed to the fear of sanctions if they plead against the Government. It might be dangerous if officials of the Executive, such as the Attorney-General, belong to an authority having disciplinary powers. Mr. G. K. J. AMACHREE of Nigeria replied by citing the example of Nigeria, where such powers are wielded by a Disciplinary Committee composed of the Attorney-General as Chairman, the Solicitor General and three senior members of the bar. Any complaint against a barrister must be addressed to the Attorney-General, who sets aside any he feels to be frivolous and brings before the Disciplinary Committee only those which have some basis in fact. If the Committee itself finds that the complaint is justified it transmits the complaint to the Federal Supreme Court, which makes the final decision. The person concerned has a further possibility of appeal to the Privy Council in London. Thus, although officials of the Executive are included in the disciplinary organization, the barrister enjoys guarantees that were at least as sound as those which might be found in a purely professional body.

Mr. Hugh MITCHLEY of Northern Rhodesia stressed the vital importance of a statute guaranteeing independence of judges and

the bar. In a country like England, this independence is based on traditional constitutional practice handed down through the centuries. Unfortunately that is not the case in Northern Rhodesia, where justice is treated on the same footing as any other public department. It should be one of the aims of the Conference to affirm the independence of judges and the bar, which should be guaranteed in each country by the constitution. Only then could the Judiciary censure an abuse of authority by the other branches. He feared the possible consequences in Africa of appointing judges on a system like that described by Mr. DEBEVOISE for the United States.

Mr. Eli W. DEBEVOISE of the United States replied that he had never intended to present that system as a model for the African countries; it presupposes among other things that there should be a minimum balance between two political parties and its application would be disastrous in countries where one party has an overwhelming majority. With regard to discipline of the bar, complaints against lawyers are brought in New York before a committee of the Bar Association. That committee sifts all cases very carefully, passing onto the court only those it deems to have some foundation. That court can remove a man from the Bar Registry or suspend him for a period or give him a public censure without suspension.

**Wednesday, January 4, 1961**

15.00-18.00

Mr. Gerald GARDINER of the United Kingdom stated that in England disciplinary power over barristers within each of the four Inns of Court is held by the Benchers, who are judges acting as delegates for their colleagues. If it is unavoidable that some outside authority intervene in legal discipline, then intervention by the Judiciary is most in order. In some African countries independence of the bar seems to be under a serious threat. In South Africa, draft legislation exists that would confer powers in this connection upon the Minister of Justice. A similar situation exists in Ghana. Teaching of law is also related to this matter. It is undoubtedly desirable that new States should train their jurists within the country, but law schools should not be too closely controlled by the administration or themselves possess disciplinary powers over the lawyers after they have been trained. He hoped that the Committee would affirm in its resolutions the principle that disciplinary authority should be vested either in the bar or in the Judiciary. Mr. BERTHAN-MACAULEY of Sierra Leone supported this suggestion.

Sir Arku KORSAH of Ghana wished to clear up a misunderstanding regarding the competence of the Council of Legal Education in Ghana. That authority fulfills the same functions as the



Benchers in England. It deals with complaints, but a final decision lies with the Court. It is found useful that the Council responsible for training of lawyers should also be responsible for their discipline. However, the Council is made up solely of lawyers and is not liable to any interference by the Executive. Sir Adetokunbo ADEMOLA of Nigeria wished to add some details to the explanations given that morning by the Solicitor General of Nigeria, Mr. AMACHREE. Organization of the bar in Nigeria is being altered. The plan is to set up a disciplinary committee composed of the Attorney-General of the Federation, those of the three regions and a certain number of barristers. The Council would deal with complaints and pass them on to a tribunal under the chairmanship of a High Court judge assisted by 15 lawyers. The tribunal would pass upon complaints of, subject to appeal to the Federal Supreme Court.

Mr. Herbert CHITEPO of Southern Rhodesia reverted to the question of legal studies. In the absence of a training centre in each country, it would be desirable for regional centres to be set up as is the practice in certain French-speaking countries. Sir Arku KORSAH of Ghana was also in favour of several countries grouping together to set up a joint teaching centre. Mr. Victor KANGA of Cameroun recalled that in all French-speaking countries admission to the bar is subject to the same conditions as in France, namely that the applicant must have a law degree and a certificate of aptitude for the profession of barrister. Mr. Israel MAISELS of South Africa believed that admission of a candidate to the bar should be entirely free from executive interference. Each country might have its particular regulations but recognition of that principle is fundamental. A decision should be made by a body composed exclusively of lawyers, and supervision should be only by the court. With regard to legal studies, he feared that local schools were not always on a satisfactory level. In certain cases it might be preferable to train African lawyers in English, French or American universities. He recommended that reciprocal agreements be concluded between neighbouring countries for admission of lawyers to practise before their courts. Mr. Edouard MONVILLE of Senegal agreed that each country might organize its own bar as it saw fit, but the bar itself has to guarantee the competence and independence of members. It was a delicate problem, particularly in countries where there are too few lawyers to constitute an independent bar. The most satisfactory solution is to vest disciplinary power in the courts.

Mr. BERTHAN-MACAULEY of Sierra Leone said that in countries having an English tradition the Attorney-General is generally a member of the body responsible for discipline of the bar. That practice is clearly inspired by the English example, according to which the Attorney-General is the head of the bar. In many African countries, however, he is an official of the Executive and his intervention in discipline of the bar might not be desirable. Mr. Herbert CHITEPO of Southern Rhodesia hoped for closer details to be given

regarding the role of the Attorney-General in countries with established Bar Associations, as in England or South Africa. Mr. Gerald GARDINER of the United Kingdom said that in England the Attorney-General is a member of the General Council of the Bar but not of the Disciplinary Committee. Mr. Israel MAISELS of South Africa added that in South Africa the Attorney-General is not a member of the Bar Council and had no part whatsoever to play in disciplinary proceedings. Mr. Kai BECHGAARD of Kenya said that a decision lies with the Supreme Court in Kenya also, upon being moved by the Disciplinary Committee, of which the Attorney-General and the Solicitor General are ex officio members but in which the barristers make up a considerable majority.

Mr. BERTHAN-MACAULEY of Sierra Leone emphasized the possible influence of the Attorney-General on internal bar affairs, since the position is becoming a political one in the English-speaking African countries.

Mr. Victor KANGA of Cameroun returned to the fears expressed by Mr. MAISELS regarding schools of law in Africa. Several faculties of law have been or were being created in French-speaking countries; they are centres for teaching modern law rather than native law. The teachers have the same qualifications as in French universities. Mr. DECOTTIGNIES of Senegal confirmed the last speaker's point, recalling that there is a Faculty of Law at Dakar and higher educational centres at Abidjan, Brazzaville and Tananarive and that their degrees have the same value as those issued by French universities. Exchanges with English-speaking universities should be expanded.

Mr. Ahmed ATABANI of Sudan wished to return to the role of the Attorney-General in bar discipline. In Sudan, the Attorney-General is not a politician but a permanent member of the Civil Service and he does not belong to the Disciplinary Tribunal of the bar. Barristers are considered officers of the court and any complaints against them must be brought before the High Court or the Chief Justice. Mr. Hugh MITCHLEY of Northern Rhodesia reiterated the concern already expressed: in English-speaking African countries, the Attorney-General is not, as in England, a member of the bar, but an official appointed by the Colonial Office, which meant that he is a part of the arm of the Executive. It is dangerous to have such a person in an organ responsible for bar discipline.

The CHAIRMAN then declared the debate closed on Questions 4 and 6 and proposed that discussion take place on Question 5, reading as follows:

"5 The guarantees of equal access to law:

(a) The availability in principle of legal advice and, if necessary, legal representation irrespective of means, in connection with criminal and civil cases.

(b) If such possibility exists, what restrictions if any are imposed on the right to free or financially-assisted legal advice or representation?

(c) To what extent are members of the legal profession prepared to offer their services without fee or at lower fee in cases where life, liberty, property or reputation are at stake?

(d) If there is a scheme of free and assisted legal aid or advice in operation, are the participating lawyers of the requisite standing and experience?"

Sir Arku KORSAH of Ghana stated that in his country access to the courts is free and equal for all persons in the sense that nothing prevents a citizen from taking his case to court. The only limitation might be the question of finance. In criminal cases, the Government assigns counsel to defend the accused only if a person is charged with murder; persons accused of other offences receive no assistance.

In civil cases the judge may release the complainant from payment of expenses by authorizing an application *in forma pauperis*; however, such exemption applies only to actual court fees, and the person concerned is not granted the free services of counsel. Mr. BERTHAN-MACAULEY of Sierra Leone recalled that the role of courts is to guarantee individual rights and freedoms, so that it is essential for every citizen to be able to appeal for protection irrespective of his financial situation. In Sierra Leone there is no organized legal aid system, everything being left to the goodwill of barristers. The Conference should formulate some general principles concerning the value of setting up in each country a system enabling every citizen to defend his rights before the courts, whatever his financial means.

Sir Adetokunbo ADEMOLA of Nigeria was in agreement with that suggestion. In Nigeria, he pointed out, the constant increase in the cost of proceedings makes reform even more necessary. There is no point in the Constitution proclaiming the principle of free access to courts if the financial aspect is overlooked. The speaker referred to the present forms of legal aid in several African countries.

In penal matters, the state generally provides for defence of persons accused of capital offences, but that should be done by experienced barristers and not by beginners. In civil cases, the bar associations should set up a system of aid similar to that established in England by private initiative.

Mr. Gerald GARDINER of the United Kingdom believed that a satisfactory system of legal aid is an essential element in any scheme based on the Rule of Law. The principle could be formulated generally because it is understood that the particular forms of application would vary from country to country. It seemed that the French-speaking African countries have a legal-aid system which is much more complete than in the English-speaking countries. Why could the English-speaking countries not do as well as the French-speaking countries? Mr. Edouard MONVILLE of Senegal set forth

the broad lines of the system obtaining in French-speaking Africa. In criminal cases, legal aid is always provided before criminal courts or when the accused is a minor or liable to police surveillance. In civil cases, applications for legal aid are submitted to a committee and the litigant receiving such aid is relieved of the cost and receives the free services of a barrister and a solicitor. In cases where an organized bar exists, as in Senegal, the chairman of the bar nominates each of his colleagues in turn to assist needy litigants. Mr. Hugh MITCHLEY of Northern Rhodesia felt the legal aid system in his country was not as bad as in some other British territories. In criminal matters, it is not limited to capital cases and can be granted even in a magistrate's court, irrespective of the class of offence. In civil cases, organization is the responsibility of the Law Society, all members of which contribute in strict rotation. Mr. J. I. C. TAYLOR of Nigeria pointed out that although, as Sir. A. ADEMOLA had already stated, it was generally young lawyers who were briefed to take over the more serious criminal affairs in Nigeria, that is because their more experienced colleagues found the very modest fees apportioned by the State in such cases insufficient. It is incorrect to say that legal aid does not exist in civil cases: the Chief Registrar can authorize a needy person to plead *in forma pauperis* and brief counsel to assist him.

Mr. Abu RANNAT of Sudan said that his Government covered the cost of defence of persons accused in the more serious criminal cases. Apart from that exception there is no general system of legal aid, the rules of procedure providing the accused with sufficient guarantees. Any judgment must be confirmed by a higher legal authority before it can become final and effective: according to the circumstances, that might be the Chief Justice, a High Court judge or a provincial court judge. All verdicts are therefore the result of a careful and impartial examination. Mr. Okoi ARIKPO of Nigeria explained further that the major political parties in Nigeria generally cover the cost of defending their members. He also pointed out that free access to the courts raises other problems in addition to legal aid, in which he was seconded by Mr. Udo UDOMA of Nigeria. Both speakers were worried by the tendency in Nigeria for the Legislature to remove certain matters from jurisdiction of the courts. An example was in the organization of chieftaincy matters, which affected individual rights, where the law gave final authority to the Executive and refused those concerned any recourse to the courts. Mr. Anthony MITCHLEY of Northern Rhodesia confirmed that in his country organization of legal aid was more satisfactory than in many other English-speaking African countries but would have preferred to see a system adopted similar to that in French-speaking countries. Moreover, in civil litigation the cost of which is steadily rising, a simpler and less burdensome procedure could be adopted.

The CHAIRMAN noted the unanimous agreement concerning the need to organize in each country a system of legal aid whereby rights could be exercised irrespective of financial resources.

At the request of the Chairman, Sir Patrick DEVLIN of the United Kingdom and Mr. Edouard MONVILLE of Senegal read the preliminary draft conclusions they had respectively prepared on the points already discussed by the Committee. It was agreed that they should continue their work together so that the text would be in conformity.

Mr. Israel MAISELS of South Africa said that the Conclusions must be prepared in a realistic spirit. It would be useless to require the Executive to abandon all voice in the appointment of judges. Sir Adetokunbo ADEMOLA of Nigeria requested the editors to co-ordinate their work. Mr. Herbert CHITEPO of Southern Rhodesia mentioned that the texts which had just been read were only preliminary drafts. Sir Patrick DEVLIN suggested that the Committee re-affirm the Conclusions of the Fourth Committee of the New Delhi Congress and restrict its own Conclusions to items concerning the African Conference in particular.

After a brief exchange of views, the Committee requested the officers of this Committee to join with Sir Patrick DEVLIN and Mr. Edouard MONVILLE in preparing the text to be submitted at the next session.

**Thursday, January 5, 1961**

09.00-12.00

Sir Patrick DEVLIN of the United Kingdom briefly recalled the essential points set forth in the Conclusions of the Fourth Committee at New Delhi. The drafting committee proposed that the Lagos Conference should re-affirm those Conclusions and that it should take particular account of their problems of new States by stressing various points to wit:

(1) It is essential that the absolute independence of judges be guaranteed and members of the legal profession have a special duty to support this effort.

(2) When rules concerning appointment, promotion or removal of judges had been found satisfactory in any country for a long period and were in agreement with the basic principles laid down in the New Delhi *Conclusions*, there is no need to abrogate such powers.

(3) When such rules are not entirely satisfactory, competence in the question should be vested in an independent organ, such as the Judicial Service Commission in Nigeria.

(4) Customary law should in principle be administered by ordinary courts; if it remains within the competence of special courts, they should be organized according to the standards of the Rule of Law.

(5) No legal powers should be vested in officials of the Executive, particularly in penal matters.

(6) The legal profession should be protected against outside interference.

(7) A legal aid system should be established for both civil and penal matters.

Mr. Edouard MONVILLE of Senegal, as the French-speaking member of the Drafting Committee, gave certain further explanations regarding item (6). If it is possible to organize a bar, the lawyers should themselves be responsible for recruitment and discipline. In cases where there are too few lawyers to constitute a bar, discipline should be administered by the courts rather than by the Executive.

The CHAIRMAN asked the members of the Committee to present their comments on the proposals of the Drafting Committee.

Mr. Christian CASSELL of Liberia suggested that the text of the Conclusions of the New Delhi Fourth Committee be reproduced *in extenso* as an annex to the text to be adopted, in order that it should be distributed to the same extent, and particularly in Africa. In Liberia the insecurity of the tenure of judges raised serious problems, since the Government is able to remove them far too easily, an example that might be followed by other new states. The Committee should take a very firm stand on that point and call upon members of the legal profession in every country to use their fullest influence to assure that judges remain secure in the tenure of office, and to protest when a judge is unlawfully removed. Where such regrettable practices exist it is the duty of lawyers to eradicate them. The principle should be particularly mentioned in the Committee's conclusions.

Mr. Hugh MITCHLEY of Northern Rhodesia believed that the comments made regarding the exercise of legal competence by administration officials should apply to civil matters even more than to criminal matters. Mr. G. IBINGIRA of Uganda took the opposite view stating that in most countries under British rule it was above all in criminal matters that the Judiciary should be separated from the administration. That view was supported by Sir Patrick DEVLIN of the United Kingdom who believed that guarantees required in criminal jurisdiction should be stressed, since the liberty of the subject was directly at stake.

Mr. Guy RAZAFINTSAMBAINA of Malagasy Republic said that the text of item (4) should use a less restrictive term than "customary law". Malagasy law, for example, is fixed in written law and is therefore not "customary law" in the strict sense of the term. It would be more correct to refer to "traditional" or "local" law. The suggestion was approved by the Committee and it was decided to use the expression "customary, traditional or local law".

Mr. Jean KRÉHER of France seconded Mr. Cassell's proposal that the text of the Conclusions of the New Delhi Fourth Com-

mittee be introduced *in extenso* as an annex to the conclusions adopted. A mere reference or summary would not be sufficient. Mr. Edouard MONVILLE of Senegal supported that view.

The CHAIRMAN noted the unanimous agreement regarding the principles followed by the Drafting Committee and presented by Sir Patrick DEVLIN at the beginning of the session.

The CHAIRMAN proposed discussion of the final two items, Questions 2 and 3 in the agenda:

"2 The authority competent to fix the general structure of courts and the organization of judicial business.

3 Whether rules of the Constitution, statutes or rules of practice ensure that legislative power shall not be exercised to affect the course of a pending or impending case in the courts."

Mr. Ahmed ATABANI of Sudan stated that he knew of no constitutional principle or statutory provision forbidding the Legislature from intervening in the course of a pending case, but that it was normal practice in all countries. In some cases, however, as an exceptional measure a retroactive provision of a law may apply to a pending case. In Sudan, for instance, the financial administration had calculated death duties on an incorrect basis for over 20 years until an Order issued by the High Court revealed the mistake. In order to avoid repayment of several million pounds by the Treasury in respect of over-payment of taxes, an Act was passed to regularize collections of taxes made in the past. The same thing happened in England some years before when legislation was passed to regularize the collection of a wireless licence fee by the Post Office in excess of the authorized limit. There was therefore no point in including strict constitutional provisions concerning the non-retroactive effect of legislation.

Mr. Gerald GARDINER of United Kingdom held that it was essential to distinguish between civil and criminal legislation in this connection. In criminal law, the principle of banning legislation affecting pending cases should not be restricted in any way, as stated in the first paragraph of the Conclusions of the Third Committee at the New Delhi Congress. Mr. Hugh MITCHLEY of Northern Rhodesia supported the previous speaker, mentioning that a recent act passed in Southern Rhodesia required associations to keep an up-to-date record of membership. It seemed that the administration was attempting to provide against the eventuality of an association being later declared illegal. Membership of such an association would then fall retroactively under the effect of penal prosecution, which was absolutely against the Rule of Law. Sir Adetokunbo ADEMOLA of Nigeria said that the Constitution of Nigeria formally prohibited the retroactive effect of criminal legislation. However, it might be necessary to go further and extend this prohibition to civil legislation.

Mr. Edouard MONVILLE of Senegal recalled the principles applied in that connection under French law. Non-retroactive ef-

fect is the general rule, and it is specifically stated in the Constitution of Senegal. It allows two exceptions only: in civil law, for rules of procedure, where application is immediate even for pending cases, and in criminal law when the new act is more favourable to the accused.

Mr. Israel MAISELS of South Africa gave a survey of each of the two Questions. Referring to Question 2, he believed it was necessary to distinguish between the general structure of the courts, which was the concern of the Legislature, and the organization of judicial business which must be in the hands of the senior judicial officers in the particular court. On Question 3, while admitting that non-retroactive effect of laws should be the rule, he believed a less uniform application is required. Even in criminal cases, exceptions might be justified. In South Africa, during the last war, the Legislature had to increase the penalties for profiteering and the new sanctions applied to offences already committed. No one had disputed the desirability of that measure, which was in accordance with the public interest. As a further example, it is normal in all countries for emergency laws to be passed in time of war or domestic disturbance, but it might be necessary to carry out arrests even before such legislation has been passed. In strict observance of Law, persons affected by such measures would be entitled to bring action for damages for arbitrary detention; it is normal to avoid that consequence by retroactive legislation regularizing arrests already carried out. It is essential to refrain from adopting too rigid an attitude in this connection.

Mr. Eli DEBEVOISE of the United States took the view that in criminal law non-retroactive effect should be an absolute principle. The Constitution of the United States states that principle as an essential element of basic rights, as does also that of Nigeria. Mr. Ahmed ATABANI of Sudan stressed the necessity of distinguishing between the civil and criminal branches, non-retroactive effect being absolutely essential in the latter. Mr. Victor KANGA of Cameroun agreed with that view and urged that the principle of non-retroactive effect of criminal laws be stated. Mr. Amadou KANE of Mali mentioned the two exceptions to the principle which are traditional in French law, namely procedural laws and criminal laws favourable to the accused. Mr. Gerald GARDINER of the United Kingdom pointed out that non-retroactivity must apply not only to laws creating new offences but also to those providing heavier penalties for existing offences.

Mr. Israel MAISELS of South Africa noted the virtually unanimous feeling in the Committee and stated that he would not express any reservation in the final resolutions.

The CHAIRMAN suspended the session to allow the Drafting Committee to prepare draft conclusions on the two Questions which had been discussed.



When the session was resumed, Sir Patrick DEVLIN of the United Kingdom proposed that, with regard to non-retrospective effect of legislation, the Committee should merely make a very brief declaration of principle. Concerning division of responsibility for judicial business, he did not believe anything needed to be added to the text of Clause VI of the Conclusions of the New Delhi Fourth Committee, which would be annexed to the final resolutions of the Congress.

Before closing the meeting, the CHAIRMAN announced that the Plenary session announced for the next morning, Friday, January 6, would not take place, so that the Committee would be able to meet for a last time on Friday morning and complete the French and English texts of its Conclusions.

### **Friday, January 6, 1961**

09.00-12.00

The CHAIRMAN read the French text of the draft conclusions prepared by the drafting sub-committee.

Miss Olive TAYLOR, Co-Secretary of the Committee, read the English text of the draft as follows:

This Committee reaffirms the Conclusions reached by the Fourth Committee of the Congress of 1959 at New Delhi which is annexed to this Report and having regard to the particular problems of emerging states, wishes to emphasize certain points in particular and to add others.

1. In a free society proclaiming the Rule of Law it is essential that the absolute independence of the Judiciary be guaranteed. Members of the legal profession in any country have over and above their ordinary duty as citizens the special duty to seek ways and means of securing in their own country the maximum degree of independence for the Judiciary.

2. The Committee recognizes that in different countries there are different ways of appointing, promoting and dismissing judges by means of action taken by the executive and legislative powers. The Committee does not recommend that these powers should be abrogated where they have been universally accepted over a long period as working well provided that they conform with the principles expressed in paragraphs 2, 3, 4 and 5 of the Report of the Fourth Committee at Delhi.

3. In respect of any countries in which the methods of appointing, promoting and removing judges are not yet fully settled, or are not working satisfactorily, this committee recommends that these powers should not be put into the hands

of the Executive or the Legislature but should be entrusted exclusively to an independent organ, such as the Judicial Service Commission of Nigeria or the Superior Council of Justice. In any country in which the independence of the Judiciary is not already fully secured in accordance with these principles it is of the first importance that they should be implemented immediately in respect of all judges especially those having criminal jurisdiction.

4. This Committee recommends that all customary, traditional or local law which should be administered by the ordinary courts of the land, and emphasizes that for so long as that law is administered by special courts all the principles enumerated here and at New Delhi for safeguarding the Rule of Law apply to those courts.

5. The practice in certain territories whereunder judicial powers especially in criminal matters are exercised by persons who have no adequate legal training or experience, or who as administrative officers are subject to the control of the Executive has been shown to result in standards that fall short of the Rule of Law.

6. To maintain the respect of the Rule of Law it is necessary that the legal profession should be free from any interference from outside

(a) in the states where it is possible to have an organized Bar the lawyers themselves should control the admission to the profession and the discipline of the members according to rules established by law

(b) in those countries where there are not sufficient lawyers to have an organized Bar, the power to discipline lawyers should be exercised by the Judiciary in consultation with senior practising lawyers and not by the Executive.

7. The Committee reaffirms Conclusion 10 of the Fourth Committee at New Delhi and recommends that all steps should be taken to ensure equal access to the law for both rich and poor, especially by the organization and provision of legal aid in both criminal and civil matters.

8. The Committee expressly reaffirms the principles that retroactive legislation, especially in criminal matters is inconsistent with the Rule of Law.

The members of the Committee expressed their agreement with the draft as a whole. There was a discussion on one point of detail only, concerning the wording of paragraph 3 (a). Mr. Victor KANGA of Cameroun, Mr. Amadou KANE of Mali, and Mr. Edouard

MONVILLE of Senegal stated that a *Conseil supérieur de la magistrature* existed in other countries besides Senegal. It therefore seemed preferable not to refer to one specific country but to mention this institution as existing "in the French-speaking African countries". The explanations provided by Sir Patrick DEVLIN of the United Kingdom, Mr. Israel MAISELS of South Africa, Mr. Udo UDOMA of Nigeria and Mr. Hugh MITCHLEY of Northern Rhodesia showed that the institution of a Judicial Service Commission was peculiar to Nigeria, so that reference to that country was required for textual clarity.

The Committee therefore adopted the following wording for paragraph 3 (a):

- (a) that these powers should not be put into the hands of the Executive or the Legislature, but should be entrusted exclusively to an independent organ such as the Judicial Service Commission of Nigeria or the *Conseil supérieur de la magistrature* in the African French-speaking countries.

Subject to the above amendments, the Committee unanimously approved the text of the Conclusions. The text was to be presented by the Chairman to the Working Committee of the Conference and submitted for discussion by the plenary meeting to be held that afternoon.

Before the meeting closed, Mr. Gerald GARDINER of the United Kingdom and Mr. Christian CASSELL of Liberia, both on their own part and on behalf of their colleagues, thanked the Chairman, the Vice-Chairman, the Rapporteur, the Co-Secretaries and the interpreters, for their contribution to the work of the Committee. The CHAIRMAN said that the merit for the drafting of the conclusions was due to Sir Patrick DEVLIN and Mr. Edouard MONVILLE whom he thanked on behalf of the Committee.

**LIST OF REGISTERED MEMBERS OF  
COMMITTEE THREE**

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| Mrs. E. ABITBOL<br><i>(Ivory Coast)</i>                            | Sir C. E. C. Nageon de<br>LESTANG <i>(Nigeria)</i>   |
| S. O. ABUDU <i>(Nigeria)</i>                                       | C. MADARIKAN <i>(Nigeria)</i>                        |
| Sir. Adetokunbo A.<br>ADEMOLA <i>(Nigeria)</i>                     | Israel A. MAISELS<br><i>(South Africa)</i>           |
| G. K. AMACHREE<br><i>(Nigeria)</i>                                 | A. K. I. MAYANJU<br><i>(Nigeria)</i>                 |
| Okoi ARIKPO <i>(Nigeria)</i>                                       | Anthony O. R. MITCHLEY<br><i>(Northern Rhodesia)</i> |
| A. M. ATABANI <i>(Sudan)</i>                                       | Hugh MITCHLEY<br><i>(Northern Rhodesia)</i>          |
| K. BECHGAARD <i>(Kenya)</i>  | Edouard MONVILLE<br><i>(Senegal)</i>                 |
| S. C. BERTHAN-MACAULEY<br><i>(Sierra Leone)</i>                    | Mrs. Aduke MOORE<br><i>(Nigeria)</i>                 |
| C. A. CASSELL <i>(Liberia)</i>                                     | Sheriff Aidara N'JIE<br><i>(Gambia)</i>              |
| Herbert W. CHITEPO<br><i>(Southern Rhodesia)</i>                   | Charles NJONJO <i>(Kenya)</i>                        |
| Phillipe COMTE<br><i>(International Commission<br/>of Jurists)</i> | C. O. OGUNBANJO<br><i>(Nigeria)</i>                  |
| J. D. B. COOPER <i>(Liberia)</i>                                   | G. N. A. OKAFOR<br><i>(Nigeria)</i>                  |
| Georges CREPPY<br><i>(Ivory Coast)</i>                             | C. D. ONYEAMA <i>(Nigeria)</i>                       |
| S. E. E. DAVIS <i>(Nigeria)</i>                                    | Joseph POUABOU<br><i>(Congo-Brazzaville)</i>         |
| Eli Whitney DEBEVOISE<br><i>(U.S.A.)</i>                           | Mohamed Ahmed Abu<br>RANNAT <i>(Sudan)</i>           |
| Roger DECOTTIGNIES<br><i>(Senegal)</i>                             | Guy RAZAFINTSAMBAINA<br><i>(Malagasy Republic)</i>   |
| Alexis DÉDÉ<br><i>(Congo-Leopoldville)</i>                         | M. G. O. SOLANA<br><i>(Nigeria)</i>                  |
| A. DESALU <i>(Nigeria)</i>   | O. SOMOLU <i>(Nigeria)</i>                           |
| Sir Patrick DEVLIN<br><i>(United Kingdom)</i>                      | J. I. C. TAYLOR <i>(Nigeria)</i>                     |
| R. O. FAWAHNIMI<br><i>(Nigeria)</i>                                | Miss Olive TAYLOR<br><i>(Sierra Leone)</i>           |
| Gerald A. GARDINER<br><i>(United Kingdom)</i>                      | E. Udo UDOMA <i>(Nigeria)</i>                        |
| F. GIWA <i>(Nigeria)</i>   | Chief Ayo WILLIAMS<br><i>(Nigeria)</i>               |
| Gerald L. IMPEY <i>(Nigeria)</i>                                   | Fatayi WILLIAMS<br><i>(Nigeria)</i>                  |
| Amadou KANE <i>(Mali)</i>  | Anthony Dashword<br>WILSON <i>(Liberia)</i>          |
| Victor KANGA <i>(Cameroun)</i>                                     | Lucien YAPOBI<br><i>(Ivory Coast)</i>                |
| Sir Arku KORSAH <i>(Ghana)</i>                                     |  |
| Jean KRÉHER <i>(France)</i>  |  |
| Noé KUTUKLUI <i>(Togo)</i>   |  |
| Chief A. O. LAWSON<br><i>(Nigeria)</i>                             |  |

## PLENARY SESSION

Friday, January 6, 1961

(afternoon)

The session was opened at 2 p.m., with Sir Adetokunbo A. ADEMOLA in the chair.

The CHAIRMAN requested the meeting to examine and discuss the conclusions adopted by each of the three Committees. As the written text of the conclusions had been distributed to participants, the Chairman felt there was no need to read it out. The meeting did not have to discuss any draft amendments submitted, which would be simply referred to the drafting committee preparing the final text of the Congress conclusions. That text would be submitted for approval by the Final Plenary Session the next morning.

The CHAIRMAN called for any comments on the conclusions of Committee I.

Mr. R. A. FANI-KAYODE (Nigeria) suggested that the last paragraph of the conclusions, which was at present very generally worded and stated that the Congress had taken cognizance of discriminatory legislation in certain countries, should state that those countries were Southern Rhodesia, Northern Rhodesia and Nyasaland. Mr. BERTHAN-MACAULEY (Sierra Leone) supported that proposal. Mr. M. E. R. OKORODUDU (Nigeria) felt it was wrong for discussion to be reopened in plenary session on proposals already overruled in committee. Mr. Vivian BOSE (India) stated the position of the International Commission of Jurists and the reasons why it seemed inadvisable to mention some countries by name in Congress resolutions. The Commission's rule had been to avoid making an attack on any person, community or State without having facts and figures before it. Congress should therefore respect that tradition. Chief F. R. A. WILLIAMS (Nigeria) agreed with Mr. Bose. It would be pointless and dangerous to mention specific countries unless an exhaustive list was prepared. Mr. Gabriel D'ARBOUSSIER (Senegal) wondered whether the general wording finally chosen should mention the fact that African countries were meant. The whole policy of the Congress was involved. According to whether it was a specifically African Congress or an international Congress with a majority of African participants, either discrimination in Africa or the actual principle of discrimination would be condemned.

The CHAIRMAN proposed that the meeting go on to discuss the conclusions of Committee I, paragraph by paragraph. The first four paragraphs raised no comment. Concerning paragraph 5, relating to a state of emergency, Chief F. R. A. WILLIAMS (Nigeria) would have preferred the text to state within what period the Executive should convene Parliament to ratify the declaration of such a state of emergency. Mr. Ignacio SANTOS (Togo) said that the constitution,

or, at the very least, legislation, should fix the minimum conditions without which the Executive may not declare a state of emergency. Mr. Gabriel D'ARBOUSSIER (Senegal) advocated a system leaving the government a wide area of discretion, but allowing for Parliament to be convened immediately and with full powers.

No comment was made on paragraph 6, and the CHAIRMAN called for any comments on paragraph 7. Mr. BERTHAN-MACAULEY (Sierra Leone) would have preferred the provisions to be more precise. Chief F. R. A. WILLIAMS (Nigeria) said that appeal rights for aggrieved persons had no sense except in countries where the constitution guaranteed fundamental liberties, thereby restricting arbitrary decisions by the Executive. In a country such as Ghana where there was no constitutional guarantee of individual rights, the courts had invariably rejected any appeals brought before them and declared that the power of deprivation had been lawfully exercised. Sir Arku KORSAH (Ghana) replied that all persons detained in Ghana had the right of invoking the process of *habeas corpus*, and that the courts had not rejected their appeals until they had made sure that their detention was in conformity with legal provisions.

Discussion on the conclusions of Committee I being concluded, the CHAIRMAN called for any comments on the conclusions of Committee II.

Mr. Ignacio SANTOS (Togo) pointed out that the French translation of the conclusions was not ready and that the French-speaking members of Committee II were agreeable to discussion taking place on the English text only.

No comment having been presented on the preamble, the provisions of paragraph 1 concerning administrative courts were then discussed. Chief F. R. A. WILLIAMS (Nigeria) felt the wording was not sufficiently clear. Mr. Kwamena BENTSI-ENCHILL (Ghana), Chairman of Committee II, said that sub-paragraph (a) dealt with the French system of an independent hierarchy while sub-paragraph (b) dealt with the Anglo-Saxon system where the ordinary courts had overriding authority. Mr. Herbert CHITEPO (Southern Rhodesia) said that administrative courts had recently been established in his country, with very slight guarantees offered to those appearing before them. It would have been better to let the ordinary courts decide with regard to appeals against the administration. Mr. BERTHAN-MACAULEY (Sierra Leone) suggested some amendments in the wording of paragraph 1. The CHAIRMAN recalled that the text the Congress would be called upon to adopt was not a legislative enactment, but a broad general statement of the sense of the Congress. As the meeting had only a small amount of time, speakers should keep to the essential points and not quibble over words.

The meeting then considered paragraph 2. Mr. Gabriel D'ARBOUSSIER (Senegal) proposed that the paragraph be simply deleted, since it dealt with a subject already covered by Committee

I, namely a state of emergency. Mr. Peter CHARLES (Southern Rhodesia) was in favour of retaining paragraph 2, the essential purpose of which was to state certain principles with regard to preventive detention. The first sub-paragraph said that, in ordinary circumstances, preventive detention should be denounced as contrary to the Rule of Law. The second sub-paragraph stated that, in the case of a state of emergency, preventive detention should be kept within very strict limits. Mr. S. J. MAYAKI (Nigeria) explained why reference had been made to "a person who is of sound mind and in good health" in the first sub-paragraph. Mr. Gabriel D'ARBOUSSIER (Senegal) regretted that two quite different questions should have been mixed up, namely preventive detention and a state of emergency. Mr. J. H. C. SMYTHE (Sierra Leone) suggested that paragraph 2 should merely state that, where there was no legislatively authorized proclamation of public emergency, a person should not be deprived of personal liberty other than on a charge of a specific criminal offence. Mr. Joseph POUABOU (Congo-Brazzaville) was surprised that sub-paragraph 1 should refer to "preventive detention without trial", which was something quite unknown in French-law countries. Mr. Jean-Flavien LALIVE (Switzerland) cleared up the doubt caused in certain minds by the English expression "preventive detention", which did not correspond at all to the French "*détention préventive*", but to "*internement administratif*". Mr. POUABOU expressed his satisfaction with this explanation and withdrew his comment.

Paragraph 3 was then discussed, concerning bail in criminal cases. Mr. G. S. K. IBINGIRA (Uganda) believed that if bail was required as the condition for release of an accused, the rate should be commensurate with the economic means of the accused. Mr. N. MARSH (United Kingdom) agreed with the previous speaker, and also suggested that, with the exception of the cases listed under (a) to (d) as authorizing preventive detention of accused persons, the right to bail should be granted. Mr. Lucien YAPOBI (Ivory Coast) suggested that the requirement of bail should be stated as very exceptional. In French law the *Ministère Public* had the right to intervene in any application for bail, which he took to be the meaning of the reference in the second sub-paragraph to the court's power to "hear and consider the views and representations of the Executive."

The CHAIRMAN called on the meeting to proceed to discussion of the conclusions of Committee III.

No comment was presented on paragraphs 1 or 2. Concerning paragraph 3, Mr. Abdul RAZAQ (Nigeria) did not find the words "... or are not working satisfactorily" objective enough. It was found after discussion that the objection related to a defect in the English text, which would be corrected.

Concerning paragraph 4, relating to the administration of local law, Mr. BERTHAN-MACAULEY (Sierra Leone) proposed the addition of a provision stating that if special customary law courts had to

be maintained their decisions should be subject to review by the ordinary law courts. Mr. Juma MWINDADI (Tanganyika) objected that, in general, the customary law followed had not been codified and that the Judiciary administering it were chosen simply because of their knowledge of customs. It would be a difficult thing for judges in ordinary courts, who might not be acquainted with custom, to decide on appeals against decisions by such courts. Mr. G. S. K. IBINGIRA (Uganda) said that, in the east African countries at least, decisions by local law courts were always open to appeal before ordinary law courts. The existence of two forms of courts, corresponding to the existence of two legal systems, seemed perfectly justifiable, so that there was no point in amending the proposed wording. Mr. Ignacio SANTOS (Togo) recalled that in French-law countries local law courts had ceased to have any competence in criminal cases since 1946, an example which might usefully be followed in English-law countries.

Concerning paragraph 5, the CHAIRMAN merely suggested a slight amendment in the English wording.

On paragraph 6 concerning the independence of the legal profession, Mr. Abdul RAZAQ (Nigeria) felt there was some contradiction in the terms of sub-paragraph (b): Was it for the law or the lawyers to fix the rules of admission and discipline?

With regard to paragraph 7 recommending that access to law be ensured, Mr. BERTHAN-MACAULEY (Sierra Leone) did not think the reference to Clause X of the Conclusions of the Fourth Committee at New Delhi was enough. He referred to one aspect of the question peculiar to English-law countries in Africa, namely that persons could not be assisted or represented by a barrister before local law courts. The results were deplorable both for justice and for the individual. A provision should be added stating the right of citizens to be assisted or represented by counsel in all bodies exercising judicial functions.

On paragraph 8, stating the principle of non-retroactivity of legislation, the CHAIRMAN noted a slight divergence between the French and English texts, which he would point out to the drafting committee.

Before closing the session, the CHAIRMAN recalled that the drafting committee, taking account of the comments and suggestions just advanced, would prepare the final resolutions of the Congress, the text of which would be submitted to the Closing Plenary Session the next morning.



## CLOSING PLENARY SESSION

Saturday, January 7, 1961

(Morning)

Sir Adetokunbo A. ADEMOLA, Chairman of the Congress, requested Mr. Gabriel d'ARBOUSSIER, Minister of Justice of Senegal, to take the chair for the first part of the session.

The CHAIRMAN said that the first part of the closing session would consist of statements by the Rapporteurs of the three Committees.

He called on Mr. Abdoulaye WADE of Senegal, Rapporteur of Committee I, who spoke as follows:

"The terms of reference of Committee I were to consider the following subject: 'Human Rights and Government Security - the Legislature, Executive and Judiciary'. This subject was dealt with under five headings in the documents communicated to us before the Congress, and each heading had its sub-divisions. In order to explain our proceedings, I wish to set forth the essential points.

"The question of human rights and government security may be considered either in normal circumstances or in a state of emergency. In examining the first of these situations, we established sub-divisions setting out two essential concepts. The first question is whether the Executive may make rules or regulations having legal effect in a field which is normally within the competence of the Legislature. The second question is whether the Legislature may delegate to an Executive organ legislative functions attributed to it under the Constitution.

"In the first concept, can the Executive intervene in matters normally within the scope of the Legislature, and if so what safeguards exist for citizens? The Committee felt that it is dangerous to allow the Executive to issue legislative orders in any field whatsoever, unless it has express constitutional authority to do so.

"With regard to the second question, namely whether the Legislature may delegate to the Executive functions vested in it by the Constitution, we examined the basic situations. The first is when such delegation is provided for under the Constitution; the second is when no such delegation is provided for under the Constitution. Even in the first situation, when there are constitutional provisions expressly stating when the Legislature may delegate certain of its powers to the Executive, we decided that such delegation is dangerous, following the essential points of a brilliant exposition by Professor Burdeau, who examined the case of France, where it would seem that the Fourth Republic succumbed precisely because the Executive enjoyed this inordinate power. On the other hand, situations where this power of delegation is not laid down in the Constitution may also constitute a hazard. The Resolutions we adopted stated in a few precise ideas the Conclusions our Committee reached on this first question. The problem with which we were basically concerned, even though it was not expressly stated, was the question of democratic power and personal power. Our belief was that in young countries whose institutions are still fresh and whose structures are quite individual it is essential to avoid personal power, endeavouring rather to canalize power through institutions and put as many limits on the Executive as possible.

"I should now like to analyse the second major question, that of a state of public emergency. This also breaks down into sub-divisions: it is one

thing to have a state of emergency once it is established, but it is quite another thing to know when circumstances allow such a state to be proclaimed and what authority is competent to do so.

We therefore first considered whether it is possible to define reasonably clear standards regarding a state of emergency, quite apart from when it should be proclaimed. Following several brilliant speeches, we arrived at the conclusion that there is no way of defining a state of emergency or reducing it to any given number of precise criteria, but that certain elements can be stated without which a state of emergency may not be proclaimed. The main condition, we stated, is that the regular operation of authority should be impossible, but that so long as a situation exists where such authorities can operate and the problems arising can be overcome a state of emergency may not be declared.

"We then went on to examine what authority should be competent to declare a state of emergency. In many cases, constitutions place this power in the Executive, and in such circumstances we again believed the powers of the Executive should be restricted. The consensus of the different views expressed was that, if the Executive is allowed to declare a state of emergency and to decide for itself when the conditions exist for such a state, certain governments may abuse this faculty, and, for example, when elections are imminent, declare a state of emergency and exploit the situation to clap their opponents in jail. We therefore believed that decisions with regard to a state of public emergency should not be the sole competence of the Executive and should, in so far as possible, depend on some other authority besides. On the basis of both national reports and viewpoints expressed in debate, we felt a distinction must be made according to whether Parliament is in session or not. If it is in session, there is no reason why the Government should not consult it. If Parliament is in session and circumstances necessitate the declaration of a state of emergency, the Government must consult the members of Parliament. During periods of recess, however, the Government may declare a state of emergency, provided always that particular circumstances call for rapid action, but Parliament must then be convened and deal with the matter.

"Those represent, in brief, the main ideas which dominated discussion on the state of emergency. There are certainly many situations of which not all have been foreseen, and a state of emergency is basically a practical matter, one which calls for particular examination depending on the conditions in each country.

"I have set forth the essential ideas which emerged from our discussion. Before going on to read out our Resolutions, however, I should like to mention that we encountered an initial problem of procedure which took up a great deal of time, and that we experienced a certain number of difficulties even afterwards, simply because we are among representatives of English-speaking and French-speaking territories, which have widely differing institutions and whose methods of work are not always identical. Moreover, the points arising in our discussion reveal that it was not always possible to harmonize concepts. It would seem that, in normal circumstances, the competence of the Executive in legislative matters does not pose any serious problem in the English-speaking countries and that the governments of these countries have arrived at some sort of empirical balance whereby they avoid encroaching on the competence of the Legislature, or not too much, at any rate. We representatives of French-speaking countries were perhaps more strongly impelled by our national history and systems of law to dwell on this problem which seemed of minor importance to our English-speaking friends.

"Another vital matter we had to examine was the proper position we should take *vis-à-vis* the countries of Africa which are still dependent. A Resolution was submitted to us calling on the Commission to investigate the situation of citizens of the two Rhodesias and Nyasaland. When we discussed this question, we first of all opposed the idea of trying to divide Africa into the categories of independent and dependent countries, concerning the

problems within our specific terms of reference. This would, we felt, have been possible for a political congress, but lawyers can study the situation with regard to human rights in African countries without distinguishing between a colonial situation or a situation of independence. True, when we come to analyse the situation of citizens from the viewpoint of the Rule of Law, we can distinguish varying degrees in the observance of that Rule according to the political situation there. We therefore decided to bring the colonial territories into the general examination. In order to illustrate what I mean, we believe a study may be made of freedom of association, freedom of assembly and freedom of expression in Africa with specific reference to given territories but without making any basic distinction between colonial and non-colonial countries. I believe, however, that debate revealed the feeling that the Commission should give more particular attention to the situation of the dependent territories in Central Africa.

"I shall now, with your permission, read the Conclusions of our Committee. There are two other suggestions made by our Committee but not included in this text: a draft declaration which will be mentioned very soon, and a draft African Convention on Human Rights inspired by the example of other continents. Therefore, the conclusions I shall now read out do not include those two other texts to be mentioned later on."

The CHAIRMAN then called on Mr. A. Ignacio SANTOS of Togo, Rapporteur of Committee II, who said:

"My report on the work of Committee II is perhaps not so full or detailed as the brilliant report you have just heard, but I shall endeavour to give the clearest possible statement of the main points discussed and to give as faithful an idea as possible of the atmosphere in our debates.

"I wish first to point out that the Conclusions to be submitted to you were drafted in English and that the participants from French-speaking countries agreed that a vote be taken on the English text as interpreted simultaneously, even if this means that the French-speaking participants have themselves to collaborate with the secretariat in preparing an acceptable French text.

"I now come to the subject of the report. As you are aware, and as you will have seen from the questionnaire distributed before our deliberations, we were concerned in the criminal and administrative aspects with the activities of the Executive. Our terms of reference were first of all brought under four headings, which were later reduced for reasons of convenience to three. First come the activities of the administrative authorities restricting freedoms or rights granted to every citizen. It was to be decided how far any redress is possible when a person considers himself injured by an act of the Executive. This heading covered matters referring to freedom of assembly and freedom of association; freedom to carry on any lawful calling; deprivation of citizenship; deportation of aliens; restraints imposed by seizure or ban on freedom of literary expression; acts interfering with freedom to travel within or outside the country; compulsory acquisition of privately-owned property without adequate compensation; in brief, any infringement of the rights guaranteed by the Constitution. Under the second heading, we dealt with possible action by the administrative authorities on grounds of public security and the possibility of appeal by persons affected. The third heading covered questions of bail, according to the term used by English lawyers, but which is not always translated in the same way in French legal terminology.

"As a basic tenet preceding discussion, we believed it was both important and essential to reaffirm the Principle of Legality or the Rule of Law as a universal principle in both scope and application. Following unanimous acceptance of this point, we agreed, again without any dissident voice, that we then should proceed to particular consideration of Africa. Since this Congress is being held in Africa and since it is a Congress of African States,

it should emphasize the conditions peculiar to Africa and remind participants and all administrative, executive and legislative authorities that the general conditions in a particular country must always be considered when a principle is applied. Principles may be absolute, but the effectiveness of government in any country is also of prime importance. The general economic, social, cultural or even political conditions must not be overlooked. That is why we decided to preface our Conclusions with the Preamble adopted by Committee II at the New Delhi Congress.

"We now come to the substance of our work. We first considered the different items of the first heading concerning restraints which may be imposed on personal rights in the different States, and we came to see the difficulties involved in applying our principle of the Rule of Law in such territories. We then went on to examine the possible forms of appeal. After this we formulated the conditions to which application of the Rule of Law in this field must be made subject, as set out in our Conclusions submitted to you today. I do not intend to go into detailed items of discussion, since many of you have not been deterred by the work in your own Committees from following proceedings in others. Moreover, the members of our Committee have been in contact with their colleagues on other Committees concerning the course of work and the atmosphere of discussion. In a moment I shall read out the Conclusions we arrived at, expressing fairly exactly and fully the different opinions stated during debate.

"Regarding the second part, instead of merely following the classification prepared for us, we preferred somewhat to combine the first part with the second, after various speakers had mentioned the differences in interpretation of the words 'public security'. In English we generally used the expression of 'emergency state', whereas the French-speaking members explained that the concepts of the '*état d'urgence*' and the '*état d'exception*' are not identical and that what is justifiable in the second may not be so in the first. We therefore brought together in this second heading the restraints described, in so far as they are dictated by exceptional measures, in the case of an emergency state, as translated by either '*état d'exception*' or '*état d'urgence*'. There was then the question of conflict between the Executive and the rights of the citizen. The Minister of Justice Dr. T. O. Elias pointed this out in his general introductory report as the eternal conflict between man and the State. Does this mean that the Rule of Law should be observed by merely subjecting the Executive to control which would prevent it from exercising its functions in normal manner? I think we arrived at a reasonable position, with regard to the prerogatives of the Executive, since what we have proposed in our Conclusions constitutes the minimum guarantee we should like to see every citizen enjoying in his country. Concerning terminology, there was some talk of '*détention préventive*', but for French-speaking lawyers the only concept here involved is that of '*internement administratif*', for it is impossible for the former to be ordered without the matter coming before the Judiciary for investigation.

"In the third part of our work, we noted a divergence between the respective concepts of lawyers trained in French and English law when it came to the question of bail, or of provisional release against payment of surety, these two concepts coinciding, whereas in French law we have provisional release by itself, a surety being one of the possible conditions for such provisional release, but by no means invariably. We were given examples which are not inherent in any juridical system but merely in particular practice. The Judiciary or the Executive is provided with practical means of safeguarding the Rule of Law, which is why we referred at the outset to the Preamble to the Conclusions of Committee II of the New Delhi Congress.

"I have given only brief explanations, for I know that I am addressing lawyers, not theoreticians but practicians, and that, whatever examples or illustrations I might offer, you will have others ready at hand."

The CHAIRMAN then gave the floor to Mr. Herbert CHITEPO of Southern Rhodesia, Rapporteur of Committee III, who made the following statement:

"I do not propose to go into very great detail in describing the work of Committee III because I think by the time I come to read the final form of the Recommendations and Conclusions you will have seen the ground covered.

"The task of Committee III was to consider the responsibility of the Judiciary and of the Bar for the protection of the rights of the individual in society. Unlike the subjects dealt with in the other Committees, this was not a matter of serious controversy. However, it is a subject of cardinal importance, and I think it is for this reason that the Committee very quickly sat down to its business without much ado.

"We realised from the beginning that there is a difference in the language and the terminology used in courts in the two systems, the French and the English. From the very outset of our deliberations, we invited members to outline the terminology that is used, so as to enable those representing the different systems to understand what was being said. After a very short time we all warmed up and there were very many views forthcoming.

"I shall only mention what appeared to me to be the most significant things discussed. It was the very first speaker who mentioned a problem which is characteristic of the whole African continent, namely the juxtaposition of two systems of law in almost every one of the African territories, an indigenous system as well as a system which is derived from one or other of the European countries. That is why the Committee's conclusions recommend that any court of law, whether customary, local or traditional, should be administered by the ordinary courts of the land. It was appreciated that there are many parts of the country where that may be difficult, but the general principle was accepted.

"The next important matter, which is also typical of the African continent, is a matter which refers to dependent territories, particularly those under British administration, where there is a Colonial Civil Service with District Commissioners holding both judicial and administrative powers. We felt it should be mentioned that the justice administered by judicial officers in that kind of position is not in true accord with the Rule of Law.

"Probably the most significant thing about the Committee's deliberations was that almost all the lawyers there accepted without question the absolute need for an independent Judiciary. For an independent Judiciary, it was assumed and correctly assumed, is a *sine qua non* of any form of justice. Consequently, the question did not even need formulating. We were most interested to learn of the efforts undertaken by Nigeria to secure the independence of the whole Judiciary, and not only the judges of the Supreme Court. It seems an excellent solution that appointment, promotion and transfer of judges should come under a body such as the Judicial Service Commission, taking these functions away from the Executive. Under the Constitution of Nigeria, practically all the judges, apart from the Chief Justice, are appointed by this Commission. We were very grateful to hear details of this fresh approach.

"Another important thing discussed but not embodied in any specific recommendation was the realization that it is absolutely essential to have faculties of law capable of providing training of a high calibre and turning out African lawyers. A note of caution was, however, sounded by several members of the Committee, who felt that we should not rush into establishing a law school at the risk of inferior standards. We have to keep this objective in view and endeavour to achieve it, but we must aim at the highest possible standard.

"A further important matter was the reaffirmation of the independence

of the Bar, a normal corollary of an independent Judiciary. We succeeded in formulating some rules concerning this principle, but I was told later that this was to be dealt with by the Congress itself. Some of the new junior members of the various Bars even wondered whether payment of fees could not be guaranteed.

"I feel I have discussed our work in sufficient detail now and I shall go on to read the final text of the Recommendations of Committee III, submitted as Recommendations of the Congress."

The CHAIRMAN, Mr. Gabriel d'ARBOUSSIER, thanked the Rap-  
porteurs and went on to say:

"Although I am invited to this Congress in my own name - and it is an honour which I appreciate to the full - in addition to my own words of gratitude and of apology for arriving at a late hour just in time to see you finishing off the job, I wish to convey the greetings of our Head of State, the President of the Republic of Senegal, Mr. Léopold Sedar Senghor, and of the Prime Minister, Mr. Mamadou Dia. They have instructed me to tell the Congress how deeply the people and the Government of Senegal wish you succes in your work. . . . I am convinced that this Congress dealing with the Rule of Law deserves our fullest attention. I believe that there is a universal principle of legality which requires our political, economic and juridical institutions to be made for man, and I say for man and not for a man, rather than man being made for institutions. At the same time, however, at the risk of abusing the great honour you do me this morning by allowing me to take the chair, I wish to indulge in two reflections. My first is to express heartfelt thanks to our Nigerian hosts who have enabled this magnificent meeting to take place, and at the same time to the International Commission of Jurists. My second thought is that we are met here today in Africa, which leads me back some 15 years to the time when Africans had to leave their continent in order to hold any such meeting. . . . In those days Africans of French and English language alike met in London, Prague or Paris, but now they meet in Africa itself, and I believe that is a most important lesson we should draw from this Congress. We are happy to see the representatives of other continents here, happy that Africa is repaying the hospitality its own representatives enjoyed in earlier days. We must arrange more frequent meetings between representatives of French-speaking and English-speaking countries if we really mean to follow up the decisive stage of reaching independence by achieving that unity which remains our supreme objective. I wish also to stress the felicitous initiative of States such as Ghana and Nigeria, which now put French-language classes in the forefront, and Guinea and Senegal, which intend to make the study of English compulsory in all schools. In this way we shall be able to overcome one of the principal barriers to mutual understanding.

"I now come to the content of our resolutions. I am most wholeheartedly in agreement with them, but allow me please to emphasize a point that is specifically the preoccupation of us jurists. At the same time I speak to some extent as a politician and sociologist. Our concern must also go to the place, the role and the foundation of our political parties and their incorporation within our Constitutions. In a written communication which I shall not impose on your patience but which I have handed to the Steering Committee of this Congress and which you will be receiving in the next few days, I have endeavoured to express my ideas on this subject, which I consider to be of the utmost importance. Together with the principle of universal legality there are also principles of legality specific to Africa and corresponding to the African requirements of independence, unity, democracy and economic development. In the same way as some modern European legal systems represent a synthesis of written and unwritten law, we in Africa have the task of bringing about a synthesis of modern and customary law. As our

work here approaches its close, the ideas I put to you may come in conflict with certain ready-made ideas regarding African realities or certain classic concepts of democracy, socialism or liberalism, but I am reminded of a famous saying that reality does not forgive errors of doctrine and that we must attempt to face all the African realities. An African proverb says that truth is like the rising sun, which you cannot hide with the palm of your hand. We must tell each other the truth and try to see things as they really are.

"I fear I have somewhat abused your attention, but I shall use the authority of the chair to cut short any further remarks and end by expressing my sincerest wishes for our common success. We are at the beginning of a new year and my wishes go out first to Africa: these are wishes for liberation – a liberation which is almost completed and which we must all help to complete in the most satisfactory way; they are also wishes for unity: however hard it may be, our generation must attain this goal through African solidarity, for Africa is an island and insular peoples are noted for their solidarity – a solidarity which must be sustained by men of good will and faith in all the continents. It is on the foundations of this unity and this independence that our peoples will raise the monument which Africa owes to humanity in its quest for justice, freedom and fraternity."

The next speaker was Sir Patrick DEVLIN, Judge of the Court of Appeal of the United Kingdom, who spoke on behalf of the English-speaking lawyers from countries outside Africa:

"I would like to speak on behalf of those who have come from countries outside Africa, echoing the words of Mr. d'Arboussier in his expression of our deep sense of gratitude for the hospitality of our Nigerian hosts. I cannot begin to itemize it all. It has been manifold both individually and collectively, and we are all indebted to them. We have been accustomed in the past to much hospitality from the countries we have visited but I think I may say that Nigeria has equalled if not excelled our previous experience. My friends from other parts of Europe will forgive me if I go on to express a deeper sense of thanks, speaking as a British lawyer to Nigerian lawyers. There is a long list of countries which have achieved independence from British rule, beginning with the United States of America and with Nigeria most recently of all. It is a remarkable thing that in all those countries, or nearly all of them, whether the parting was peaceful or invidious the British system of law and the administration of justice has been retained. And I think that that proves that the English Common Law is a noble instrument. It is put to the service of free men. The Roman Empire left a legacy of law behind it but I believe that English Law will have been found to have influenced more people and to have influenced them more profoundly, because with all its imperfections in the end it is always on the side of freedom. Africa is old and Africa is young. Europe is old. Nigeria has all her years before her and I do not think it is erroneous to say that some day the laws that you have learnt from us, enriched and enlarged in your own way, will still be in effect at a time perhaps when much that is English is lost in antiquity. And when you preach these principles will you always remember this, that their strength does not lie on paper; it is not made by eminent jurists, it is not even made by great judges, though there have been some of them, it is made by ordinary judges and jurists, its strength lies in the ordinary common mind and it is made by their decisions which they gave in the daily task of dealing justice between man and man, not labouring so that their names might be written in the scroll of history, but carrying out that which humbly they believed they could do with a profound belief in the authority of the law, in the incorruptibility of the law and in its dignity.

"I will leave Nigeria with a sense of gratitude and something more than a sense of gratitude, with a sense of exhilaration because I have seen those Nigerian lawyers to whom I have spoken and heard their contributions to the

debates, not merely the substance of them but also the manner in which they were presented. I have seen and realized that they understand the true principles of English Law as well as anyone in England ever did. I will leave with that sense of exhilaration and with a sense of confidence that Nigeria will show the world what a lovely thing it is to be a young nation living in freedom under the Law."

Mr. Victor KANGA, Minister of Justice of Cameroun, then spoke as follows on behalf of the French-speaking participants:

"It is a considerable honour for me to be invited to speak on behalf of the delegations of French-speaking jurists, and I wish first to thank the Government and the people of Nigeria for their warm welcome. Allow me also to thank the jurists of the French-speaking countries who have come in such large numbers to attend this Conference, demonstrating their profound interest and showing their authority and their sound legal knowledge through their speeches.

"It has been justly observed that 1960 was a Year of Africa, owing to the accession to independence of so many African States. I believe that 1961 will be no less African if this policy of *emancipating the remaining dependent countries* of this great black continent is pursued and if the immediate concerns of political advancement are transcended for economic, social and cultural advancement. Mention has also been made of African unity and I believe that the African jurists, acting through the International Commission of Jurists, will give a glowing example of solidarity. When our Chiefs of State have come together, it has been primarily to discuss political problems, both individually and in occasional and restricted meeting, but they have probably never had the opportunity of promoting a larger concourse than this, on African soil and to discuss and attempt to settle questions of common interest.

"In this perspective, the Lagos Congress has afforded us the opportunity not only to state once again that the Rule of Law must extend to the whole continent of Africa but also to show that, above and beyond purely political anxieties, the leading African jurists are determined to promote an African concept of observance of the Rule of Law which I believe to be a guarantee for the stability and healthy development of our young institutions. In other words, the aim of this Conference has not been to seek out the elements of purely African Law, for law is universal by nature. Rather has it sought to establish mutual information and collaboration between lawyers from the various countries represented, in order that the principles of the Rule of Law may triumph and justice reign.

"I must also point to one of the positive results achieved by the Conference in its implicit and explicit criticism of polices in South Africa, Rhodesia, Nyasaland and the Portuguese and Spanish colonies where the principles of law are flouted.

"I sincerely trust that the contacts between jurists and legal experts established here may be extended beyond this Conference in order to consolidate African unity, which we pursue as a factor of rapid progress and peaceful emancipation of the territories still under foreign domination. May this Conference, made possible by the International Commission of Jurists, provide us with a lesson of solidarity, above and beyond the Resolutions in which our work has been engaged: an important lesson which we can take away with us when most of us must leave in a few hours. I have said it before and I am happy to repeat it - we have been spoiled in Nigeria and I again ask you to accept our thanks to the Government and people of Nigeria, which have set the stage for valuable debates, providing the proper atmosphere for the spirit of freedom and African fraternity to develop, respecting the Principle of Legality and ensuring the triumph of the Rule of Law both in Africa and in the other continents."



The next speaker was Mr. Dashword WILSON, Chief Justice of Liberia, who said:

"I consider it as a rare privilege to be one of the invited guests at this Conference, the humanitarian objective of which – the security of the rights and liberties of the human race – must be acclaimed as the greatest effort and safest path to the peace of the world and cordial relations between men and nations. The Rule of Law can only operate within a free society, a society in which the people are supreme and enjoy freedom of speech, freedom of the press, freedom to worship God according to the dictates of their own conscience and all the other basic rights recognized and protected in democratic societies. Yet many of the world's population, because of the type of societies in which they live, are still denied the benefit of the Rule of Law. . . .

"The emergence of many African States in recent years to nationhood has attracted the attention of the International Commission of Jurists, particularly because of the democratic system we adopt as our political philosophy, the only framework within which a free society can exist. . . .

"Freedom is the cherished desire of all peoples once subjugated; now, however, they must apply their unrelenting effort and determination to safeguard human dignity and the rights of the individual. The Universal Declaration of Human Rights, which we so often acclaim as the bulwark of a free society, must never be mere theory, but should be genuinely and sincerely practised, and no section of the population of any State relegated to an inferior status. Dictatorship, commonly practised in totalitarian or police States, is a poisonous arrow that could well paralyse the sinews and spine of our people and plunge them back in a worse state of servitude than ever previously known, especially if this dictatorship were wielded by leaders who have justly charged their former masters with that same inhuman treatment. It is the drunkenness of power that very often overwhelms our balance and we soon forget the lessons of the past. The theme of our Conference could have had no better title than 'The Rule of Law in a Free Society'.

"It matters not how well-meaning the law-makers of a country may be, or how constructive their laws; what matters is the correct application of those laws, selflessly administered towards the sole aim of the rights, privileges and well-being of the people, not subjected to the will of an individual or class of individuals.

"When one speaks of the African personality, it should and must be a liberal interpretation that eliminates bigotry, which our race despises in its aspiration for equality among men. We acclaim the principle of assimilating all men in a single brotherhood, not to dominate or claim superiority over anyone, much less our own kith and kin. Application of the Rule of Law in a free society becomes ineffective when discrimination and the vain vices of superiority complexes are introduced.

"The Rule of Law in a free society, as it applies to Africa and the African, cannot reach perfection overnight; unlike advanced nations, we face complex problems not generally experienced in other parts of the world. Instead of having imputed to us the malediction characterized as backwardness, incompetence and inertia and predicting a hopeless future, we are entitled to the sympathetic consideration of those advanced nations whose attainment to accepted modern standards was not a miraculous accomplishment. Measuring us by their own yardstick would be premature and unjustified."

After this address, the session was suspended for a short time.

After the suspension, Sir Adetokunbo A. ADEMOLA resumed the chair and gave the following speech:

"It has been a great pleasure to me that men from different parts of the world should meet together and talk about common problems affecting fundamental rights and human dignity. It is remarkable that the only profession in the world which devotes itself to this task is the legal profession. It is also significant that today more men in our profession than in any other are working towards peace. There is a strong movement in the profession working towards peace through law. The concept of the Rule of Law is not of western origin, as has been pointed out during our meetings. It was known in this part of Africa before the advent of western civilization. It is important that jurists who are dedicated to the strengthening and expanding of the Rule of Law should keep together an international force with branches in different countries. I feel sure that you share this belief.

"At the Plenary Session yesterday, many suggestions were made for amendments to the reports of the different Committees. These proposals have been taken into consideration and the Conclusions are now issued in their final form. The Steering Committee of the Congress hopes they represent the unanimous feeling of the Congress. We can only hope that they will be a guide to lawyers devoted to the Rule of Law; they will certainly be the future guide of the International Commission of Jurists.

"I would like to ask the Nigerian Branch of the Commission, who are the hosts for this Conference, not to allow their guests, and particularly those from other continents, to part without thanking them for their very valuable contribution. We have enjoyed meeting you and we have learned a lot from you. We can assure you that we in Nigeria propose to be guided by all we have heard and learned here.

"I shall now read a declaration which we feel expresses the core of our discussions. We hope you will accept the principle stated and will associate yourselves with it."

The CHAIRMAN read out the *Law of Lagos*, the text of which is reproduced above (page 11).

The CHAIRMAN then called on Mr. Jean-Flavien LALIVE, Secretary-General of the International Commission of Jurists, who said:

"It is customary for the Secretary-General of the International Commission of Jurists to try to draw a provisional balance sheet on the last day of one of its conferences. I need not conceal from you that looking over the last five days I speak with a feeling of great satisfaction. It is a matter of special pleasure to the Commission that jurists from 23 African countries have taken part in this Conference. It had been planned to obtain the participation of at least one distinguished lawyer or jurist from every one of the African countries South of the Sahara and we have almost achieved that result. But you may have noticed that there are no lawyers here from some countries such as Guinea, Angola and Mozambique. Personal invitations were sent to three leading lawyers of Guinea but we have received a telegram of thanks from the Government of Guinea saying that they could not take part in the Conference. This is deeply regretted by all of us.

"In both Angola and Mozambique we were unfortunately unable to obtain the names of one single African lawyer and this is, as we all will agree, most disturbing. But on the whole I feel that we have done well. We have not only been fortunate in the number of African countries which are 'represented' here, but also in being honoured by the presence of the highest dignitaries of the law of many countries. I really doubt whether at any

previous legal conference anywhere in the world there have been so many Chief Justices, judges, ministers of law and other outstanding lawyers. You may agree with me that the significance of this Conference springs from the fact that it is representative of most African countries, and that for the first time in African history it has provided for a free exchange of views between the French and English-speaking lawyers of Africa.

"It is also very important that this Conference took place in Nigeria. Nigeria gives me the distinct impression of being a dynamic nation, a nation of great activity, progress and development of its natural resources. It is a particular privilege for us to be here so soon after the celebration of Nigerian independence, and it has occurred to us that this African Conference on the Rule of Law is in a way part of these celebrations, as Nigerian independence and statehood and the Rule of Law are inseparably united.

"Before I came here I had been told of the Nigerian gift of hospitality, but the warmth of our reception here has exceeded all our expectations. I want, therefore, to express on behalf of the International Commission of Jurists and of all participants our heartfelt thanks to the Nigerian Government and to the Committee of Honour as well as to 'Liberty', the Nigerian Section of the Commission, for all that they have done for us.

"This Conference, I should add, was guided by the firm and wise but very kind hand of our Chairman, the Chief Justice of the Federation of Nigeria, the Honourable Sir Adetokunbo A. Ademola, whose able direction assured orderly conduct of the Conference. We are greatly indebted to him for his contribution to the success of the Conference and for the assistance he gave us in the many tasks necessary to the preparation of this Conference.

"Further, I would like to thank Dr. Elias, the Attorney-General and Minister of Justice of Nigeria, our General Rapporteur, for the very effective support which he has given us. He helped us in drafting the questionnaire which served as a basis for our discussion and he prepared, as you all know, the most useful and valuable general report. Without his help and his learned and clear legal thinking this Conference could not have taken the same happy course.

"I want also to express a few words of appreciation to the Nigerian press and radio. Both have shown a unique understanding of the importance of the Rule of Law in the prominence given to the reports and news of the Conference. Indeed, for the press and population in Nigeria and I believe in some other African States, it is apparent that the Rule of Law is not merely a technical formula. Everyone seems to be aware of the importance of the Rule of Law and fully appreciative of its scope and possibilities. I must say that as a Swiss lawyer I feel rather envious because I have never witnessed the press of my own country giving such prominence to a meeting of lawyers. When I return I shall certainly report and quote this good example to my countrymen.

"Many of you who may have come to this Conference with some doubts and questions about the aims and purposes of the International Commission of Jurists have now been able to determine that the Commission is truly a non-political and non-governmental organization which seeks to facilitate a free interchange of ideas between jurists, judges and lawyers of all countries on a wide international scale.

"The Rule of Law is based upon one permanent and fundamental factor, as well as others which may be considered more flexible and relative. This permanent factor is the belief that every individual has the right to enjoy the dignity of man. It is incumbent upon us as jurists, by the application of appropriate legal methods, to find the ways and means of assuring effective protection of fundamental human rights. There is another factor which is more flexible and complex, namely that a country which takes the Rule of Law as its authority is not obliged to adopt only one particular form of legal procedure and institutions. In coming to Africa the International Commission of Jurists does not wish to advocate specific institutions but seeks simply to

examine with you those procedures and institutions which most closely correspond to the particular needs of your respective countries.

"It is, however, essential not to lose sight of the ultimate aim of law which is man, the safeguarding and development of his dignity. It is in this area that the jurist may act most effectively not only by participating in the drafting of laws which give effect to these lofty principles but also by demonstrating the vigilance necessary to avoid violation thereof. In this field it is easy to indulge in some hypocrisy but in reality in all countries, even those whose legal systems seem solidly rooted, there are institutions which could and should be improved.

"Moreover, our countries can be distinguished from those of totalitarian form or tendency (be it openly manifest or disguised) not only by the representative nature of the governments but also particularly by the existence of an independent Judiciary, a reliable and courageous Bar, aware of its responsibilities, and a vigilant public opinion.

"Our stay in Lagos and participation in this Conference have been an unforgettable experience for us also. Among other things I have been impressed by the importance which African jurists attribute to effective protection of human rights and fundamental liberties. In this respect I find the Conclusions adopted by the three Committees particularly appropriate. Although these texts are not to be considered as having the force of law, they will certainly be closely studied by many jurists as well as governments throughout the world. After the International Congress of Jurists at New Delhi in 1959 the recommendations with respect to criminal procedure served as a basis for the revision of several codes of criminal procedure, notably in Latin America. This will give you some indication of the effect of the work of a non-governmental organization such as ours.

"The International Commission of Jurists has thus accomplished the part it wished to fulfil in coming here to Africa. Its role is that of a catalyst, and as such it has brought together leading African jurists who must decide what action is to follow the work now completed. The Commission has achieved the objective which it assigned to itself; it must now continue its work which extends to all parts of the world.

"Next month I am going to Latin America. One of the objects of this mission is to make preparations for a World Congress of jurists. What you African jurists wish to do can be done through your own initiative now that the example has been set and contacts made. Of course, the Commission will always be glad to lend its assistance.

"In closing, I would like once again to thank all our friends and the participants in this Conference for their co-operation and assistance which has assured the great success of our meeting of which the documents adopted by the Conference and the Conclusions of the three Committees and the Law of Lagos represent active and vital testimony."

The last speaker was Mr. Vivian BOSE, president of the International Commission of Jurists, who said:

"I have a pleasant and a sad duty to perform: sad because it is time to say goodbye, pleasant because of the memories that we will carry away with us and because of the friendships we have made and renewed. The real value of these conferences does not lie in the debates, nor even in the resolutions, but in the personal contacts that we are able to make and in what we are able to learn from the other fellow. I am sure that there is no one of us who does not feel the richer because of the contacts that he has made and the experiences that he has exchanged.

"I want to express our very deep appreciation to the Nigerian Government for their generosity and hospitality and for the numerous courtesies that have been extended to us; to the Governor-General for the very lovely garden party that he gave us yesterday; to the Prime Minister for the time

that he spared for us and for the inspiring and encouraging words with which he opened this Conference; to the President and members of 'Liberty' for the immense pains they have taken to see that we were comfortable and happy; to the lawyers and members of the Bar for the deep interest they have shown in our work; to the press for their generous coverage of our proceedings; to our Chairman for the great personal effort he has made to ensure that this Conference should be a success and for his generous hospitality. You have seen him at our deliberations and our receptions, but you have not seen him behind the scenes, working till two and three in the morning as he did last night, or rather this morning, helping the Drafting Committee to finalize our Resolutions. May I, on behalf of us all, offer him not only our thanks but also our congratulations on conducting our proceedings with such patience, tact, ability and success.

"I wish also to include in our thanks a body of persons who do not share the limelight but without whose devotion beyond the normal call of duty we could have achieved nothing. First comes our very able Secretary-General who has toiled unceasingly and whose keen and brilliant mind you have all admired. Next is our hard-working and tireless Administrative Secretary whose initiative, tireless enthusiasm and drive were an example to us all. Although he does not seem to have any time for sleep, he is always cheerful, ready to help and a model of patience; our thanks are also due to the office staff, the secretaries, the typists and translators; while you and I have been comfortably snoring in our beds they have worked until the early hours nearly every morning in order that you might get your documents on time, and they have not complained. It speaks volumes for them, and it speaks volumes for the enthusiasm that our work inspires in all who come into contact with it, an enthusiasm born of the conviction that what we are doing is worthwhile. Nor must we forget those who have worked into the small hours of the morning in drafting the final Resolutions; not members of our staff, not those who were bound to do those things, but persons who have voluntarily helped us out with their time and their brains.

"I must also include in our thanks once again the Ford Foundation and the Nigerian Government for their very generous contribution towards the funds for this Conference. I must also thank those who have come from far-off lands to help make our gathering a success; the observers, the participants and the representatives of international organizations, and in particular the representative of the United Nations. I also thank you, the members of this Conference, for your breadth of vision, for your sympathetic understanding of points of view that were not yours, especially about matters upon which you felt deeply, for the disciplined and good-humoured manner in which you behaved when you did not get your own way. It is easy to bear oneself well when one wins victories; the test of a man comes when he is made to accept defeat. That is the Rule of Law operating on a personal plane. One behaves with good grace in defeat, not because one has to, because there is a police force behind the compellant, but because that is the way of life one has accepted, the way of a gentleman. May I thank the African members of the Conference in particular for helping us of the International Commission of Jurists to maintain our traditions of fairness and objectivity.

"Now I want to address a word to our African brothers and to speak on a personal plane. I feel with you the pain, the indignities and humiliations that would be our lot and the lot of our children in some quarters of the globe because I am one of you and would suffer with you because of the colour of my skin and my racial origins. But I realize that our deepest interests do not lie in a violent outburst of our feelings that could only embarrass and alienate our friends. They lie in a sober and dignified appraisal by impartial outside judges and observers of incontrovertible facts that shame and stir the conscience of right-thinking men. I thank you for having acted with dignity and restraint and for having refrained from taking the cheap and easy way that would have gained you the plaudits of the crowd but which, in the long run, would have made you lose your case - your case and my

case - for we both sail in the same boat. There are many like myself, bound by the unwritten restraint of high judicial office or other reasons, who are working hard for your cause and mine but who would not be able to associate themselves with this great organization if it turned itself into a political platform for the airing of grievances. That would kill our organization, which would truly be a tragedy."

The CHAIRMAN then declared the session closed.

The final event on the programme of the Conference was a dinner offered by the International Commission of Jurists on Saturday January 7. The guest of honour was His Excellency Nnamdi AZIKIWE, P.C., Governor-General of the Federation of Nigeria, who gave the following address:

"Yesterday, I had the pleasure of entertaining this galaxy of international lawyers, judges and legislators at a cocktail party held in the main garden of State House. Today, it is my privilege to have been invited to address you at this farewell dinner given by the International Commission of Jurists, the organizing body for the conference which you have been attending in the past week here in the Federal capital of Nigeria.

"As many of you may be already aware, the subject of my inaugural address at my installation as Governor-General and Commander-in-Chief of the Federation of Nigeria on November 16, 1960 was, I am happy to say, 'Respect for Human Dignity.' I need not emphasize that the substance of my address is broadly the same as that of the subject of study at this conference, namely the dissemination of the concept of the Rule of Law throughout the world and its adoption and practice as the guiding principle of all democratic governments. On that occasion I naturally spoke as a student of political science and, as such, many of my formulations were in the language of political struggle for freedom and respect for the human individual, with particular reference to Africans.

"May I be permitted to reiterate here some of the things that I hold dear in the current political and constitutional experiments in which we are all engaged in the continent of Africa. My understanding of the cardinal principles of the Rule of Law is that certain fundamental freedoms and human rights must be safeguarded and respected. Such rights are the personal liberty of the subject, the inviolability of private property and its expropriation by the State only subject to reasonable compensation, freedom of speech and of assembly, freedom of religion, freedom of the press, free and equal access to the courts for all citizens, the right to one's life and reputation, and a general feeling of orderliness and well-being in the community as a whole.

"There is no doubt that, as a necessary corollary of the struggle for independence, sharp words and sometimes harsh actions have had to be indulged in as well by the nationalists as by their respective overseas administrators. But I assure you that, for our part, we have done all this in a spirit of sportmanship, and never with bitterness or personal rancour towards those against whom this fight was directed. After all, the struggle for colonial freedom, particularly in British African dependencies, has in many ways been stimulated by the very character and purpose of British colonial administration, which has from the earliest period of our contact with Britain planted the germ of revolution by the establishment of the Legislative Council as a kind of debating society.

"At first, membership of those councils was confined to heads of Government departments who were naturally Europeans; but, from the beginning of the last quarter of the nineteenth century, Africans have been granted membership of these councils and there has been ever-widening franchise granted at various stages, sometimes as a result of indigenous

political agitation, at other times as a result of contemporary world events. In the immediate post-war years the characteristic change has been from the Crown Colony system of government through the Legislative Council and the Governor's Executive Council into representative national assemblies which, in the last decade or so, have been transformed into responsible legislatures and ministerial councils of the Cabinet type. The process has now come full circle in most of the British and even the French dependencies; those now in the queue for self-government will no doubt achieve it in due course. Thus it can be seen that the march of the human mind on this continent has been towards larger and happier freedoms.

"One can only regret that other cosmopolitan European Powers have not done so well in their African dependencies. The current unhappy events in the Congo might well have been avoided if the Belgians had given suitable opportunities for political experience to their African protégés for a reasonable period prior to the grant of independence. The Portuguese and the Spaniards still have to show the world that they appreciate the lessons of the Congo in all their implications. Even the much more enlightened French Colonial policy that produced the first African Governor-General Félix Eboué, in the 1940's, has had to abandon its traditional assimilationist idea for one of independent, autonomous African development. The former did not give as free a scope to African political consciousness and eventual emancipation as did the latter which the British seem to have adopted much earlier in their dependencies.

"But along with political independence have come new responsibilities that call for qualities of a high order, not only from the African leaders themselves but also from the members of the communities in these newly independent States. It is, I think, therefore appropriate that the International Commission of Jurists should have chosen Nigeria as the forum for the study of the problems incident to responsible and liberal systems of government in Africa at this time.

"Nigeria is easily the most populous country in the continent and has, I am told, nearly as many lawyers within its borders as there are to be found in the rest of indigenous Africa. Perhaps I may be permitted to add that it is commonly agreed that Nigeria offers to Africa and to the world probably the best example of a country that is noted for orderly advance and for the practice of democratic principles in the field of government. As others have no doubt brought to your attention some of the salient features of our constitution, I do not propose to enter upon another discourse here tonight. Even if I were so minded, I should hesitate to inflict upon you fresh controversies at the conclusion of your most interesting and fruitful debate.

"I do not doubt at all that all the countries here represented at this conference are vitally interested in the promotion of the Rule of Law and of intelligent exercise of personal freedoms and human rights. All the countries are anxious to secure the maximum human freedom for their citizens in a manner that is consistent and even compatible with reasonable State security. It is in the practical application of these principles that countries differ.

"Your great debate seems to me have shown some of the peculiar problems of some territories about the doings of which many of us may have had qualms. Nothing but first-hand knowledge of local conditions and circumstances can help in achieving better understanding among the nations. I do hope that all of you have benefited from the various exchanges of ideas, whether in plenary sessions or in committees. You will no doubt permit me to say, however, that where there have been peculiar local circumstances warranting certain departures from accepted standards, some of the delegates must also have seen that others have had similar problems and probably tackled them differently. It is by such interchange of ideas and comparing of notes that this Commission has made a particularly useful contribution to the problems facing Africa today.

"No-one, not even a Head of State, who has been listening to all the learned debates and discussions that you have been holding in Lagos during this past week can fail to be impressed with the learning and the sincerity of all the participants. I assure you that the Conference has been very educative to all of us in Nigeria and, I believe, to all our guests from outside Nigeria who have made such notable contributions to the success of the Conference.

"Finally, I hope you have all enjoyed your stay with us and that we shall have the pleasure of welcoming you here again to another Conference, whether it be one to be held by the International Commission of Jurists or by some other international organization. On behalf of the people of Nigeria I extend to you our good wishes for your future."

In a brief final speech, Mr. Jean-Flavien LALIVE, Secretary-General of the International Commission of Jurists, thanked the Governor-General of Nigeria for his excellent speech and, through him, the authorities and the lawyers of Nigeria for their exceptionally cordial and stimulating hospitality. In a few sentences he then surveyed the contribution of the Congress to the study and the development of African public law.



**NOTE ON PUBLICATIONS  
OF THE  
INTERNATIONAL COMMISSION OF JURISTS**

Listed below are some recent publications of the International Commission of Jurists which are still available on request.

**Journal of the International Commission of Jurists**, issued bi-annually. Among the articles are:

*Volume I, No. 1, (Autumn 1957):*

The Quest of Polish Lawyers for Legality (Staff Study)  
The Rule of Law in Thailand, by Sompong Sucharitkul  
The Treason Trial in South Africa, by Gerald Gardiner  
The Soviet Procuracy and the Right of the Individual Against the State, by Dietrich A. Loeber  
The Legal Profession and the Law: The Bar in England and Wales, by William W. Boulton  
Book Reviews

*Volume I, No. 2 (Spring-Summer 1958):*

Constitutional Protection of Civil Rights in India, by Durga Das Basu  
The European Commission of Human Rights: Procedure and Jurisprudence, by A. B. McNulty and Marc-André Eissen  
The Danish Parliamentary Commissioner for Civil and Military Government Administration, by Stephan Hurwitz  
The Legal Profession and the Law: The Bar in France, by Pierre Siré  
Judicial Procedure in the Soviet Union and in Eastern Europe, by Vladimir Gsovski and Kazimierz Grzybowski, editors  
Wire-Tapping and Eavesdropping: A Comparative Survey, by George Dobry  
Book Reviews

*Volume II, No. I (Spring-Summer 1959):*

International Congress of Jurists, New Delhi, India: The Declaration of Delhi, Conclusions of the Congress, Questionnaire and Working Paper on the Rule of Law, Reflections by V. Bose and N. S. Marsh  
The Layman and the Law in England, by Sir Carleton Allen  
Legal Aspects of Civil Liberties in the United States and Recent Developments, by K. W. Greenawalt  
Judicial Independence in the Phillipines, by Vicente J. Francisco  
Book Reviews

*Volume II, No. 2 (Winter 1959 – Spring-Summer 1960):*

Democracy and Judicial Administration in Japan, by Kotaro Tanaka  
The Norwegian Parliamentary Commissioner for the Civil Administration,  
by Terje Wold  
The New Constitution of Nigeria and the Protection of Human Rights and  
Fundamental Freedoms, by T. O. Elias  
Law, Bench and Bar in Arab Lands, by Saba Habachy  
Problems of the Judiciary in the "Communauté" in Africa, by G. Mangin  
Legal Aid and the Rule of Law: a Comparative Outline of the Problem,  
by Norman S. Marsh  
The "General Supervision" of the Soviet Procuracy, by Glenn G. Morgan  
Preventive Detention and the Protection of Free Speech in India, by the  
Editors  
The Report of the Kerala Inquiry Committee  
Book Reviews

*Volume III, No. 1 (Spring 1961):*

The African Conference on the Rule of Law, Lagos, Nigeria: The Law of  
Lagos, Conclusions of the Conference, Draft Outline for National  
Reports, Reflections by the Hon. G. d'Arboussier and the Hon. T. O.  
Elias  
Preventive Detention under the Legal Systems of: Australia, Burma, Eastern  
Europe, India, Japan, the Philippines, Singapore, and the Soviet Union  
Book Reviews

**Bulletin of the International Commission of Jurists**, publishes facts  
and current data on various aspects of the Rule of Law.  
Numbers 1 to 6 and 9 are out of print.

*Number 7 (October 1957):* In addition to an article on the United Nations  
and the Council of Europe, this issue contains a number of articles  
dealing with aspects of the Rule of Law in Canada, China, England,  
Sweden, Algeria, Cyprus, Czechoslovakia, Eastern Germany, Yugoslavia,  
Spain and Portugal

*Number 8 (December 1958):* This number deals also with various aspects  
of the Rule of Law and legal developments with regard to the Council  
of Europe, China, United States, Argentina, Spain, Hungary, Ceylon,  
Turkey, Sweden, Ghana, Yugoslavia, Iraq, Cuba, United Kingdom,  
Portugal and South Africa

*Number 10 (January 1960):* Contains information on Ceylon, China, Cze-  
choslovakia, Greece, India, Kenya, Poland, Tibet, and on the United  
Nations and the World Refugee Year

*Number 11 (December 1960):* This number deals with the various aspects  
of the Rule of Law and recent legal developments with regard to Algeria,  
Cyprus, Dominican Republic, East Germany, Hungary, United Nations  
and the United States

**Newsletter of the International Commission of Jurists** describes  
current activities of the Commission:

*Number 1 (April 1957):* Commission action as related to the South African  
Treason Trial, the Hungarian Revolution, the Commission's inquiry  
into the practice of the Rule of Law, activities of National Sections,  
and the text of the Commission's Questionnaire on the Rule of Law

- Number 2 (July 1957):** A description of the Vienna Conference held by the International Commission of Jurists on the themes: "The Definition of and Procedure Applicable to a Political Crime" and "Legal Limitations on the Freedom of Opinion"
- Number 3 (January 1958):** "The Rule of Law in Free Societies", a Prospectus and a progress report on an International Congress of Jurists to be held in New Delhi in January 1959
- Number 4 (June 1958):** Notes on a world tour (Italy, Greece, Turkey, Iran, India, Thailand, Malaya, Philippines, Canada and United States), comments on legal developments in Hungary, Portugal and South Africa
- Number 5 (January 1959):** Preliminary remarks on the New Delhi Congress, summary of the "Working Paper on the Rule of Law", information on activities of National Sections
- Number 6 (March-April 1959):** The International Congress of Jurists held at New Delhi, India, January 5-10, 1959, summary of proceedings, "Declaration of Delhi" and Conclusions of the Congress, list of participants and observers
- Number 7 (September 1959):** The International Commission of Jurists: Today and Tomorrow (editorial), Essay Contest, Survey on the Rule of Law, Legal Inquiry Committee on Tibet, United Nations, National Sections, Organizational Notes
- Number 8 (February 1960):** The Rule of Law in Daily Practice (editorial), Survey on the Rule of Law (a questionnaire), Report on Travels of Commission Representatives in Africa and the Middle East, Legal Inquiry Committee on Tibet, Essay Contest, National Sections
- Number 9 (September 1960):** African Conference on the Rule of Law (editorial), New Members of the Commission, South Africa, Mission to French-speaking Africa, Dominican Republic, Portugal and Angola, Tibet, Missions and Tours, Essay Contest, National Sections, The Case of Dr. Walter Linse, Organizational Notes
- Number 10 (January 1961):** A Welcome to the African Conference on the Rule of Law, New Member of the Commission, National Sections, Missions, Publications
- Number 11 (February 1961):** Law of Lagos, African Conference: Conclusions, Postscript, Summary of Proceedings, List of participants. Missions and Tours
- Number 12 (June 1961):** A Mission to Latin America, A Farewell to the Outgoing Secretary General, The new Secretary-General, Liberia, Missions and Observers, Essay Contest, Appeal for Amnesty 1961, National Sections

SPECIAL STUDIES AND REPORTS  
OF THE INTERNATIONAL COMMISSION OF JURISTS

- The Rule of Law in the United States (1958):** A statement prepared in connection with the Delhi Congress by the Committee to Co-operate with the International Commission of Jurists, Section of the International and Comparative Law of the American Bar Association.
- The Rule of Law in Italy (1958):** A statement prepared in connection with the New Delhi Congress by the Italian Section of the International Commission of Jurists.
- The Rule of Law in the Federal Republic of Germany (1958):** A statement prepared in connection with the New Delhi Congress by the German Section of the International Commission of Jurists.
- The Hungarian Situation and the Rule of Law (April 1957):** Account of the Hague Conference on Hungary and compendium of the material submitted by the International Commission of Jurists to the United Nations Special Committee on the Problem of Hungary.
- The Continuing Challenge of the Hungarian Situation to the Rule of Law (June 1957):** Supplement to the above report, bringing the Hungarian situation up to June 1957.
- Justice in Hungary Today (February 1958):** Supplement to the original report, bringing the Hungarian situation up to January 31, 1958.
- The Question of Tibet and the Rule of Law (July 1959):** Introduction, The Land and the People, Chronology of Events, Evidence on Chinese Activities in Tibet, The Position of Tibet in International Law, 21 Documents.
- Tibet and the Chinese People's Republic (July 1960):** Report to the International Commission of Jurists by the Legal Inquiry Committee on Tibet, Introduction, the Evidence Relating to Genocide, Human Rights and Progress, the Status of Tibet, the Agreement on Measures for the Peaceful Liberation of Tibet, Statements and Official Documents.
- South Africa and the Rule of Law (November 1960):** Detailed inquiry into the problems of *Apartheid* in the Union of South Africa. Analysis of legislation and practice compared with pertinent provisions of the Universal Declaration of Human Rights. Statement by Commission's Observer, F. Elwyn Jones, Q.C., M.P., Legislative Texts, Affidavits.

**The Rule of Law in a Free Society (July 1960):** A report on the International Congress of Jurists held in New Delhi, India, January 1959, which includes: *Act of Athens; Declaration of Delhi; Conclusions* of the Congress; List of Participants; Programme; Proceedings of the Plenary Sessions and the four Committees of the Congress – (1) The Legislative and the Rule of Law, (2) The Executive and the Rule of Law, (3) The Criminal Process and the Rule of Law, 4) The Judiciary and the Legal Profession and the Rule of Law; Questionnaire on the Rule of Law; Working Paper on the Rule of Law in a Free Society; and a statement on the objectives, organization, history and activities of the International Commission of Jurists.

**The African Conference on the Rule of Law (June 1961):** Report on the first African Conference on the Rule of Law held in Lagos, Nigeria, January 1961, and attended by 194 judges, practising lawyers and teachers of law from 23 African nations as well as 9 countries of other continents. The Report contains the *Law of Lagos; Declaration of Delhi; Act of Athens; Conclusions* of the Conference; List of Participants; Programme; Draft Outline for the National Reports and Working Papers which were used as a basis for the discussions in the three Committees; extensive summary of the proceedings in the Plenary Sessions and Committees.

**The Cassell Case: Contempt in Liberia (August 1961):** a study of the disbarment of Counsellor Christian A. Cassell of Monrovia for critical observations on the administration of justice in Liberia.

**International Commission of Jurists, Basic Facts (September 1961):** A brochure on the objectives, organization and membership, history and development, activities and finances of the International Commission of Jurists.

*Thanks to the generosity of individual jurists and legal institutions in a number of countries, the Commission has been able, upon request, to distribute free of charge its publications. The unprecedented increase of its readers has now made it imperative to invite them to contribute, in a small measure, to the printing costs of the Journal by payment of a small subscription fee.*

*Apart from subscriptions, the International Commission of Jurists is dependent on voluntary contributions, gifts, and bequests for the continuation and expansion throughout the world of its activities to strengthen and promote the Rule of Law and the guarantees of human rights inherent in that concept. All such financial contributions towards the expansion of the work of the Commission are welcome; cheques should be made payable to the Secretary-General, International Commission of Jurists, Geneva, Switzerland.*