FOR THE RULE OF LAW

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CONTENTS

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THE RULE OF LAW

AND

HUMAN RIGHTS

Principles and Definitions elaborated at the Congresses and Conferences held under the auspices of the International Commission of Jurists, rearranged according to subject-matter, with cross-references to the principal human rights conventions and well indexed.

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RATIFICATION AND IMPLEMENTATION OF INTERNATIONAL CONVENTIONS ON HUMAN RIGHTS

1968, the year that is about to begin, is being observed throughout the world as International Year for Human Rights. In its programme for the Year, the General Assembly has given top priority to the ratification and implementation of international conventions in the human rights field.

As a contribution to this objective, this article gives a short survey of the progress that has been made in the adoption, ratification and implementation of the international conventions concluded under the aegis of the United Nations and its Specialized Agencies. A Ratification Table of the principal relevant conventions is to be found at the end of this article.

1. Implementation of Human Rights by the United Nations

The *Universal Declaration of Human Rights,* adopted by the General Assembly on December 10, 1948, does not have the legal status of a binding convention, and its significance is more political and moral than legal. Nevertheless, it does have some juridical character as being an elaboration and interpretation of articles 55 and 56 of the Charter, by which States agree to take joint and separate action for the promotion of universal respect for, and observance of human rights and fundamental freedoms for all. It may, however, be said that everything that is being done by the U.N. and its family of organizations to develop and safeguard human rights is based upon the principles in the Universal Declaration.

The specific rights provided for in the Universal Declaration in 1948 have been defined in detail by the International Covenants on Human Rights, adopted by the General Assembly on December 16, 1966.

The *International Covenant on Economic, Social and Cultural Rights* deals with the rights to self-determination and non-discrimination, to work, to enjoyment of just and favourable conditions of work, to form and join trade unions and to strike, to social security, to protection and assistance for the family, to an adequate

standard of living, to the enjoyment of the highest standard of physical and mental health, to education, and to take part in cultural life and enjoy the benefits of science. The Covenant will come into force three months after the 35th instrument of ratification or accession has been deposited. Twelve states have signed it but none have so far ratified it. [1]

The *International Covenant on Civil and Political Rights*, which also begins with the rights to self-determination and non-discrimination, sets out the classical human rights to life, liberty, to freedom of movement and residence, to equality before the law in both civil and criminal proceedings, to fair trial and the right of appeal, to compensation for miscarriage of justice, to recognition as a person before the law, to freedom of conscience and religion, to freedom of opinion and expression, to freedom of assembly and association, to marry and found a family and to special protection for children, to take part in the conduct of public affairs, to vote and to stand for election at genuine, periodic elections, to equality and equal protection of the law and to practise the customs and religion of one's group. The Covenant will come into force three months after the 35th instrument of ratification or accession has been adopted. There are so far twelve signatures but no ratifications or accessions. [2]

Any State member of the United Nations or of any Specialized Agency may become a party to both Covenants.

In addition to the two International Covenants, twelve international conventions on specific human rights have been adopted by the United Nations. A list of these, with a note concerning their entry into force, is given at the beginning of the Ratification Table.

While the Charter of the United Nations gives the General Assembly and the Economic and Social Council competence to take action to safeguard human rights—and it is under this power that the Assembly adopts and lays open for signature, ratification or accession the conventions relating to human rights—it does not provide any machinery for their implementation. The General Assembly, aware of this serious defect, has recently adopted several measures with a view to the protection and implementation

[1] The text of the Covenant was published in the *Journal* of the International Commission of Jurists, Vol. VIII, N° 1, (Summer, 1967), p. 53.

[2] The text of the Covenant was published in the *Journal* of the International Commission of Jurists, Vol. VIII, N° 1, (Summer 1967), p. 62.

of human rights. The *International Convention on the Elimination of all Forms of Racial Discrimination*, adopted by the General Assembly in December 1965, forms the first major break-through, by providing for specific machinery and procedure for its implementation. It provides for the setting-up of a Committee on the Elimination of Racial Discrimination, consisting of 18 expert and impartial members, elected by the States Parties to the Convention, to whom the States will submit reports dealing with all measures adopted by them to give effect to the provisions of the Convention within their individual national systems. The Committee, in turn, will report annually to the General Assembly on its activities, and make recommendations based on these reports. The Committee is also empowered to hear disputes between the States Parties as to the interpretation and carrying out of the provisions, and its Chairman will set up a special *ad hoc* Consultative Commission, whose good offices are to be made available to the States concerned. Further, a State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction, who claim to be victims of a violation by that State Party of any of the rights set forth in the Convention.

The *International Covenant on Civil and Political Rights* contains almost exactly similar machinery for the implementation of its provisions as that provided for in the above Convention. An Optional Protocol to the Covenant was also adopted at the same time, which empowers the Human Rights Committee provided for by the Covenant to receive and consider communications from individuals who claim to be victims of violations of any right set forth in the Covenant. The Protocol will come into force three months after the tenth instrument of ratification or accession has been deposited and the Covenant itself is in force. There are so far seven signatures but no ratifications or accessions.[3]

The International Covenant on Economic, Social and Cultural Rights provides that all States Parties must submit reports on the measures which they adopted, and on the progress made, in achieving the observance of the rights recognized in the Covenant, as well as on any special circumstances which make it difficult for them to carry out all their obligations under the Covenant. These reports

[3] The text of the Optional Protocol was published in the *Journal* of the International Commission of Jurists, Vol. VIII, N° 1, (Summer 1967), p. 78.

will be transmitted through the Secretary-General to the Economic and Social Council, which may bring to the attention of other organs of the United Nations, including especially the Commission on Human Rights, the subsidiary organs and the Specialized Agencies concerned with furnishing technical assistance, any matters arising out of the reports which may assist such bodies in deciding on what international measures should be taken towards the progressive implementation of the Covenant.

Two proposed conventions in the field of human rights are at present under consideration in the United Nations.

The first is the Draft *Convention on the Elimination of Religious Intolerance*, the substantive articles of which have been approved by the Commission on Human Rights and the Economic and Social Council. The General Assembly will determine the implementation measures and final clauses and adopt the whole Convention.[4]

The Draft *Convention on Freedom of Information* was originally prepared in 1948 by the U.N. Conference on Freedom of Information. Four of its articles have been adopted by the General Assembly's Third Committee; fifteen articles are still to be discussed.

2. Implementation by the International Labour Organization

The ILO is unique among the specialized agencies and among all other international organizations in the effective work that it does, within its own terms of reference, in formulating and defining specific human rights and their implementation. The adoption of recommendations and conventions is done by the parliamentary body of the Organization, the International Labour Conference, which meets annually to debate policy and to approve the budget. To date, the ILO has some 128 conventions and 131 recommendations, covering almost the whole range of labour problems and social policy, and it constantly revises existing standards and formulates new ones.

Of the 128 ILO Conventions, the General Assembly chose four for special promotion during the International Year for Human Rights. These are: The *Convention concerning the Abolition of Forced Labour*, the *Convention concerning Discrimination in respect*

[4] The text of the Draft Convention with a commentary was published in the *Journal* of the International Commission of Jurists, Vol. VI, N° 2, Winter 1965, pp. 288-306.

of Employment and Occupation, the *Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*, the *Convention concerning Freedom of Association and Protection of the Right to Organize*. In the Ratification Table, which follows, three more ILO Conventions are included: those on Forced Labour, on the Right to Organize and Collective Bargaining and on Social Policy. These Conventions seem to have an outstanding importance in the field of human rights. It should be added, however, that practically all ILO Conventions are relevant to human rights and that any special selection will, to a certain extent, be arbitrary.

The ILO Constitution provides for the enforcement of its conventions in Articles 5, 24 and 25. It requires each Member State to ensure that these conventions and recommendations are adopted by the State's competent legislative authority; and the ILO itself is available to give special advice on the drafting of legislation and labour codes. Member States are also required to supply regular reports on the effect given to the conventions which they have ratified, and to supply reports on unratified conventions and recommendations relating to subjects specifically chosen by the Governing Body. These reports are examined every year both by the Committee of Experts and by the Conference Committee on Conventions and Recommendations. There is, in addition, provision for the submission to the International Court under the ILO Constitution (Article 37) of any matter concerning the interpretation of a Convention, either by contentious proceedings or by way of advisory opinions, pursuant to the General Assembly's authorization under Article 65(1) of the Statute of the Court. The Constitution further puts at the disposal of Member States and their workers' and employers' organizations, a procedure for making complaints or representations regarding the application of international labour conventions. The government concerned is given an opportunity to make a reply, which is published together with the representation; and if it is unsatisfactory or dilatory, the Governing Body may point out this fact.

The ILO has also taken practical action for the promotion of trade union rights, whereby it has established a special complaints procedure, available to governments and to workers' and employers' organizations, which is distinct from the general procedure relating to the application of international labour conventions. The complaints are considered by a Fact-Finding and Conciliation

Commission on Freedom of Association and by the Governing Body's Committee on Freedom of Association; and States have, in consequence, frequently been asked to amend their legislation or practice in this area. Thus the Government of Japan ratified in 1965, the *Freedom of Association and Right to Organise Convention*, 1948 (N° 87), and work was done to resolve outstanding problems concerning labour relations in the public sector in Japan. [5] It is seen clearly here that the strength of the ILO's enforcement provisions lies in the special machinery whereby States may be submitted to criticism from their own workers' and employers' delegates, and from those of other States.

3. Implementation by UNESCO

By reason of their nature and the very fields in which they are exercised, all UNESCO activities, existing 'to contribute to peace and security by promoting collaboration among the nations through education, science and culture' (UNESCO Constitution), tend to ensure respect for human rights as a whole.

Special mention should, however, be made of the *Convention against Discrimination in Education*, which was adopted by the General Conference of UNESCO on December 14, 1960 and came into force on May 22, 1962. So far, 36 States have become parties. The Convention is open to all members of UNESCO. The machinery for the enforcement of the Convention has only recently begun to move. In 1962, the General Conference of UNESCO adopted a Protocol providing for the establishment of a Conciliation and Good Offices Commission to seek settlement of disputes between parties to the Convention; this has now been ratified by 8 States and will come into force three months after the deposit of the 15th instrument of ratification, acceptance or accession. Member States have been requested to send reports on the implementation of the Convention, which are considered by a Special Committee of the Executive Board, and are to be transmitted, with the Committee's analysis and comments, to the General Conference.

The application of the instruments against discrimination in education is to continue, and is to be emphasized over the next five years of the UNESCO Development Decade, in particular through the setting up of the Conciliation and Good Offices Commission as

[5] *Official Bulletin* of the I.L.O., January 1966, Vol. 49, N° 1, Special Supplement.

soon as the 1962 Protocol enters into force, and also through the system of requiring periodical reports from Member States to be submitted for study.

4. The Procedure of Ratification

A convention is binding only on those States which have become parties to it. There are normally two distinct procedures which make a convention binding on a State. The one is the national procedure which makes the Convention part of the law of the contracting State, and which is carried out in accordance with its constitutional law; the other procedure, which is regulated by the convention itself, makes the convention part of the State's obligations under international law.

The international procedure most frequently provided for by the United Nations Conventions is that of signature and ratification or accession. Under this, a State may become a party either by first *signing* the convention and then *ratifying* it, or by *acceding* to the convention without having signed it. Some conventions provide for *acceptance* after a prior signature or without any prior signature, a procedure which is analogous to that of ratification or accession respectively.

In respect of the *succession* of States to multilateral conventions, new States may notify the Secretary-General that they recognize themselves to be bound by conventions which had been applied to their territory, prior to independence, by States then responsible for their international relations. After such a notification a State is considered to have been a party to the Convention concerned as from the date of its independence. [6]

[6] See *State Succession and Protection of Human Rights*, Daniel Marchand, in *Journal* of the International Commission of Jurists, Vol. VIII, No. 1, p. 36.

RATIFICATION TABLE *

Selected International Conventions

1. International Covenant on Economic, Social and Cultural Rights (not yet in force)
2. International Covenant on Civil and Political Rights (not yet in force)
3. Optional Protocol to the International Covenant on Civil and Political Rights (not yet in force)
4. Convention on the Prevention and Punishment of the Crime of Genocide (in force since 12/1/1951)
5. International Convention on the Elimination of All Forms of Racial Discrimination (not yet in force)
6. Convention Relating to the Status of Refugees (in force since 22/4/1954)
7. Convention relating to the Status of Stateless Persons (in force since 6/6/1960)
8. Convention on the Reduction of Statelessness (not yet in force)
9. Convention on Political Rights of Women (in force since 7/7/1954)
10. Convention on the Nationality of Married Women (in force since 11/8/1958)
11. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (in force since 9/12/1964)
12. Convention on the International Right of Correction (in force since 24/8/1962)
13. Protocol amending the Slavery Convention signed at Geneva on 25th September 1926 (in force since 7/12/1953)
14. Slavery Convention of 25th September 1926 as amended (in force since 7/7/1955)
15. Supplementary Convention on the Abolition of Slavery, the Slave Trade, Institutions and Practices similar to Slavery (in force since 30/4/1957)
16. UNESCO Convention against Discrimination in Education—1960

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* The sources of the Ratification Table are:

International Conventions of Human Rights, UN Office of Public Information, Reference Paper N° 6, June 1967, *Status of International Conventions on Human Rights, as of May 15, 1967.*

International Labour Conventions, *Chart of Ratifications, June 1st, 1967.*

17. ILO (29) Forced Labour—1930
18. ILO (105) Abolition of Forced Labour—1957
19. ILO (87) Freedom of Association and Protection of the Rights to Organize—1948
20. ILO (98) Right to Organize and Collective Bargaining— 1949
21. ILO (100) Equal Remuneration—1951
22. ILO (111) Discrimination (Employment and Occupation)—1958
23. ILO (117) Social Policy (Basic Aims and Standards)—1962

The number against each Convention on this page represents the Convention itself in the table that follows.

Symbols—The letter R below a Convention means that the State in the left hand margin has RATIFIED, acceded or succeeded to it.

The letter S means that the State's SIGNATURE has not yet been followed by ratification.

ATIFICATION TABLE

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Afghanistan				R					R				R	R	R			R						
Albania				R					R	R				R	R	R	R		R	R	R			
Algeria				R	S	R	R							R	R		R		R	R	R			
Argentina				R		R			R	R		S			R	R	R	R	R	R	R			
Australia				R	S	R				R			R	R	R	R	R							
Austria				R		R			S				R	R	R		R	R	R	R	R			
Barbados																	R	R	R	R				
Belgium				R		R	R		R				R	R	R		R	R	R	R	R			
Bolivia				S	S				S										R					
Botswana																	R	R	R					
Brazil				R	S	R	S		R	S				R	R		R	R		R	R	R		
Bulgaria				R	R				R	R				R	R	R	R		R	R	R	R		
Burma				R					S				R	R			R		R					
Burundi					S	R											R	R						
Byelorussian SSR				R	S				R	R				R	R	R	R		R	R	R	R		
Cambodia				R	S										R									
Cameroon					S	R								R			R		R	R				
Canada				R	S				R	R			R	R	R			R				R		
Central African Republic					S	R			R					R		R	R	R	R	R	R	R	R	
Ceylon				R						R	S			R	R		R							
Chad																	R	R	R	R	R	R		
Chile				R	S				S	S	S	S					R							
China				R	S				R	R	S		R	R	R	R			R		R	R	R	R
Colombia	S	S	S	R	S	R	R			S				R					R		R			
Congo (Brazzaville)						R			R					R			R		R					
Congo (Kinshasa)				R		R											R							
Costa Rica	S	S	S	R	R		S		S							R	R	R	R	R	R	R	R	
Cuba				R	S				R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
Cyprus	S	S	S		R	R									R		R	R	R					
Czechoslovakia				R	R				R	R	R			R	R	R	R		R	R	R	R		
Dahomey					S	R					R			R		R	R	R	R			R		
Denmark				R	S	R	R		R	R	R		R	R	R	R	R	R	R	R	R	R		
Dominican Republic				S				S	R	R	R				R		R	R	R	R	R	R		
Ecuador				R	R	R	S		R	R		S	R	R	R		R	R		R	R	R		
El Salvador				R			S		S			R			S			R						
Ethiopia				R					S			S							R	R		R		
Federal Republic of Germany				R	S	R	S								R		R	R	R	R	R	R		
Finland				R	S				R		R		R	R	R		R	R	R	R	R			
France				R		R	R	S	R		S	R	R	R	R	R	R		R	R	R			
Gabon					S	R			R								R	R	R	R	R	R		
Gambia						R																		
Ghana				R	R	R			R	R				R	R		R	R	R	R		R	R	
Greece				R	S	R			R		S		R	R	S		R	R	R	R				
Guatemala				R			S		R	R		R			S			R	R	R	R	R		
Guinea	S	S			S	R	R				S		R	R		R	R	R	R	R		R	R	
Guyana																	R	R		R				
Haiti				R					R					R	R		R	R		R	R			
Holy See					S	R	S																	
Honduras	S	S	S	R			S										R	R	R	R	R	R		
Hungary				R	R				R	R			R	R	R	R	R		R	R	R	R		
Iceland				R	R	R			R						R		R	R	R	R	R	R		
India				R	S				R	S			R	R	R		R			R	R	R		
Indonesia									R							R	R			R	R			
Iran				R	S										R		R	R				R		
Iraq				R									R	R	R		R			R	R	R		
Ireland						R	R			R			R	R	R		R	R	R	R				
Israel	S	S		R	S	R	R	S	R	R	S		R	R	R	R	R	R	R	R	R	R	R	
Italy	S	S		R		R	R				S		R	R	R	R	R		R	R	R	R	R	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Ivory Coast						R								R			R	R	R	R	R	R		
Jamaica	S	S	S		S	R			R	R				R	R		R	R	R	R			R	
Japan									R								R		R	R				
Jordan				R										R	R		R	R			R	R	R	
Kenya						R											R	R		R				
Kuwait														R	R	R		R	R			R	R	
Laos				R											R		R							
Lebanon				R					R					R		R								
Lesotho																	R		R	R				
Liberia	S	S		R		R	R		S				R	R	R	R	R	R	R	R		R		
Libya														R			R	R		R	R	R		
Liechtenstein						R	S																	
Luxembourg						R	R								R		R	R	R	R				
Madagascar									R					R		R	R		R		R	R	R	
Malawi									R	R				R	R					R	R	R		
Malaysia										R					R		R	R		R				
Maldive Islands																								
Mali											R						R	R	R	R		R		
Malta														R	R	R	R	R	R	R				
Mauritania					S												R		R			R		
Mexico				R	S				R				R	R	R		R	R	R		R	R		
Monaco				R		R							R	R										
Mongolia				R	S				R							R								
Morocco				R		R							R	R	R		R	R		R		R		
Nepal									R					R	R									
Netherlands				R	S	R	R	S		R	R		R	R	R	R	R	R	R					
New Zealand				S	S	R				R	R		R	R	R	R	R							
Nicaragua				R					R					R			R							
Niger					R	R			R		R		R	R	R		R	R	R	R	R	R	R	
Nigeria														R	R		R	R	R	R				
Norway				R	S	R	R		R	R	R		R	R	R	R	R	R	R	R	R	R		
Pakistan				R	R				R	S				R	R		R	R	R	R		R		
Panama				R	S												R	R	R	R	R	R		
Paraguay				S					S			S							R	R				
Peru				R	S	R						S			S	R	R	R	R	R				
Philippines	S	S	S	R	S		S		R		R			R	R	R		R	R	R	R	R		
Poland	S	S		R	S				R	R	R			R	R	R	R	R	R	R	R	R		
Portugal						R				S				R	R		R	R		R	R	R		
Republic of Korea				R			R		R															
Republic of Vietnam				R										R	S		R			R		R		
Rumania				R					R	R	S		R	R	R	R	R		R	R	R			
Rwanda																		R						
San Marino															S									
Saudi Arabia				R																				
Senegal						R			R					R			R	R	R	R	R			
Sierra Leone					S				R	R		R		R	R		R	R	R	R		R		
Singapore										R							R	R		R				
Somalia					S												R	R				R		
South Africa													R	R										
Spain														R			R							
Sudan														R	R		R			R				
Sweden				R	S	R	R		R	R	R		R	R	R		R	R	R	R	R	R		
Switzerland						R	S						R	R	R		R	R				R		
Syria				R									R	R	R		R	R	R	R	R	R	R	
Thailand									R															
Togo						R								R			R		R					
Trinidad and Tobago							R		R	R				R	R		R	R	R	R				
Tunisia				R	R	R								R	R		R	R	R	R		R		
Turkey				R		R			R				R	R	R			R		R				

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
ganda							R			R				R	R	R	R	R		R				
krainian SSR				R	S				R	R				R	R	R	R		R	R	R	R		
nion of Soviet Socialist Republics				R	S				R	R				R	R	R	R		R	R	R	R		
nited Arab Republic				R	R							R	R	R	R	R	R	R	R	R	R	R		
nited Kingdom					S	R	R	R	R	R			R	R	R	R	R	R	R	R				
nited Republic of Tanzania						R				R					R		R	R		R				
nited States of America				S	S						S		R	R										
pper Volta				R							R						R		R	R		R		
ruguay	S	S	S	S	S				S	S									R	R				
enezuela				R	S												R	R						
'estern Samoa											R													
emen																								
ugoslavia				R	S	R	R		R	R	R	R	R	R	R	R	R		R	R	R	R		
ambia																	R	R					R	

THE NEW FAMILY CODE OF THE GERMAN DEMOCRATIC REPUBLIC

Following a drafting stage which had lasted for more than ten years —which clearly indicates the importance attached to the subject-matter—the German Democratic Republic adopted a new Family Code at the end of 1965. In spite of the rigid compression of the subject-matter and the at times questionable simplifications, this Code constitutes a coherent body of law. In as few as 110 Articles (compared with more than 600 Articles in the German Civil Code), it has regulated the vast and important field of matrimonial and family life and their related matters. In accordance with the principle of 'democratic socialism', the second (1965) draft of the Code was discussed at many thousands of popular assemblies of different kinds and varying sizes. These discussions resulted in over 200 minor amendments being incorporated in the legislation now in force as the Family Code of 20 December 1965 (*Gesetzblatt der DDR*, 1966, Part I, page 1).

It need hardly be emphasized that the Marxist-Leninist concept of life finds full expression in this new Code. Whatever opinion is held as

to the rightness or wrongness of Marxist ideology, it is essential to take account of it in interpreting the Code, and to regard it as a reliable guide to the scope of its application; it is in fact an indispensable key to comprehension of the logical connection between the individual provisions and, indeed, to the particular wording employed therein. Since Marxism is a doctrine aimed at achieving a specific historical objective, the orientation of the activities of all members of society towards that goal is a desirable prerequisite for its success. The regulation of marriage and the family, and above all of the bringing up of children, therefore, takes on an exceptional importance, a point which has frequently been emphasized in the writings of the originators of the doctrine.

Marriage and Family Life

In her report introducing the Family Code to the 17th Session of the People's Assembly on 20 December 1965, Dr. Hilde Benjamin, who was then Minister of Justice, referred to objections, which had been raised during the discussions by the popular assemblies mentioned above, to the early marriageable age in the German Democratic Republic. It had been argued that, at least for males, the age should not be set as low as 18 years. Dr. Benjamin explained that, having had regard to the principle of equality of the sexes and to the fact that at 18 a man is eligible to vote and to be called up for military service, the legislature had not been able to take account of these views *(Art. 5, para. 4)*. In the Republic a civil marriage, to which as a general rule the usual impediments apply, is valid in law after both future spouses have given their consent in the presence of a Registrar, and the marriage has been entered in the register. Instead of taking place in a Registry Office, this formal act may be carried out in a social collective *(Article 6)*. Both the 1955 and 1965 drafts provided that, on marriage, both spouses retained their former surnames, their children being obliged, however, to take the same surname. This provision was an exaggerated application of the principle of equality of rights and has not been adopted in Article 7, which lays down that both spouses shall take the same surname, be it that of the wife or of the husband.

Equality of rights between husband and wife is one of the fundamental principles of the family code and is observed with rigid consistency throughout this law. For instance, it is provided that all matters concerning their matrimonial life shall be settled jointly by the spouses *(Art. 9, para. 1)*, that keeping house and bringing up their

children are obligations incumbent on both of them *(Art. 10, para. 1, subpara. 1)*, and that expenditure on the household and for the other needs of the family shall be met by both spouses, either in cash or in kind or in work performed *(Art. 12, paras. 1 and 2, subpara. 1)*. If one spouse is unable to carry out this obligation, the other spouse becomes solely responsible for all expenses *(Art. 12, para. 2, subpara. 2)*. Provision is also made for children who are of age and are living in the household to make a contribution *(Art. 12, para. 1)*. In legal transactions relating to matrimonial and family life, either spouse may represent the other and enter into binding legal obligations in his or her name *(Article 11)*. The converse of full rights and emancipation being granted to wives is that, in principle, they are expected to engage in an occupational activity. While nowadays they very frequently also do so in Western countries, the pursuance of social and occupational activities by married women is a standard feature of communist society. In this connection Article 10, para. 1, subpara. 2, and para. 2 provide as follows:

> The relationship between the spouses shall be so arranged as to enable the wife to reconcile her occupational and social activities with motherhood. If a spouse who has not previously worked takes up an occupational activity, or if one spouse decides to pursue further training or to perform social work, the other spouse shall lend support to such an intention by comradely consideration and help.

The Law governing the property of the husband and wife is a competent adaptation of various well-known laws in this field taken from other legal systems. The result resembles in many respects the *community of after-acquired property*, formerly optional under German civil law *(Arts. 1519 et seq., Civil Code, previous version)*, particularly to the extent that all property acquired by the couple after their marriage which by its nature is not personal becomes *community property*, and property owned prior to the marriage and property of a personal nature forms part of the separate estate of each spouse, and is administered independently. *Community property* is transferred by the spouses jointly. Where third parties are concerned, each spouse has the power to alienate the *community property*, except in the case of a house or real estate; however, if the third party is aware that the spouse not a party to the transfer is opposed to it, the transfer is void *(Articles 13 and 15)*. *Community property* also serves as a security for personal obligations entered into by each spouse during the marriage. The other spouse may, however, oppose seizure of the property by a creditor. In this event the court will rule on the extent to which the property may be seized, in the light of the provisions governing

termination of the joint ownership, which are discussed at greater length below. The opposing spouse may apply for a premature termination if the protection of his [1] own interests or of those of minor children so requires *(Article 16)*.

The spouses are free to submit the matrimonial property to any other system; they are not bound to choose a particular kind of Settlement. However, any other arrangement must be in the form of a written contract. It is a basic rule that the terms of the contract must be compatible with the principle of the equality of rights *(Article 14)*.

If the spouses are living apart because of the unwillingness of one or both to continue living together, a spouse who, on account of age, illness, the obligation to bring up the children or for any other reason, is unable to maintain himself is entitled to claim maintenance from the other spouse, the amount to be based on their previous standard of living; the right is forfeited if the spouse in need of maintenance had, at the time of the separation, been guilty of a serious breach of conjugal duty or had given the other spouse cause for separation by reason of such a breach of duty *(Article 18)*. Maintenance may be claimed retro-actively for the preceding year, and an order for immediate payment may even be made *(Art. 20, para. 2, subpara. 1)*. A spouse may assign his right to maintenance to a third party or authority, who will temporarily put himself in the position of the spouse liable for maintenance *(Art. 21, para.2)*.

Regardless of whatever form the matrimonial relationship may take, it is the duty of certain State authorities, particularly of the Youth Assistance authority attached to the District Council (the subordinate administrative authority) to help the spouses in matters pertaining to their matrimonial life; in this connection provision is also made for the institution of special marriage and family advisory bodies. A similar duty is also incumbent on social organizations such as the spouses' work collectives and house communities *(Art. 4, paras. 1 and 2, 44)*.

Termination of Marriage

Article 23 of the Family Code cites the following as grounds for termination of a marriage:

1. Death of a spouse;
2. Divorce;

[1] Throughout this article, unless the context requires otherwise, the masculine includes the feminine.

3. A decree of nullity;
4. A decree of the presumption of death of a spouse.

Even in the first (1955) draft of the Code (of which Chapter I, respecting the contracting and dissolving of marriage, became law in the form of the Marriage Ordinance of 24 November 1955), there had been a definite abandonment of the principle of divorce on the grounds of a matrimonial offence. The only ground for divorce in the German Democratic Republic is a complete breakdown in the marriage. Such a breakdown is only recognized when society no longer has any interest in preserving the marriage, that is, when it can no longer be regarded as contributing to the further development of society. This rule is the product of Marxist ideology. The relevant provision, section 29 of the Marriage Ordinance of 24 November 1955 (Chapter I of the first draft of the Family Code), reads as follows *(para. 1, subpara. 1)*:

> A marriage can only be dissolved if there are grave reasons therefor and if the court has determined by means of careful inquiries that the marriage has lost its meaning for the spouses, for the children and for society.

A similar wording was used in Article 24, para. 1, subpara. 4 of the second (1955) draft of the Family Code. Here again the concept of loss of meaning for society was included as an independent ground for divorce, in addition to the lack of meaning for the spouses and the children.

Answering the 'workers', who during their discussions had pressed, *inter alia*, for the re-introduction of the concept of a guilty party in divorce proceedings, Dr. Benjamin stated in her report that, from the ideological view-point, to do so would be to revert to individualism, indeed even idealism, in marriage law. The thoroughly sibylline wording of Article 24, para. 1, which regulates divorce, is perhaps attributable to these individualistic trends for which, in practice, allowance could not be made. This provision reads:

> A marriage can only be dissolved if the court finds that there are reasons of such gravity as to permit of the conclusion that the marriage has lost its meaning for the spouses, for the children and, consequently, also for society.

This wording would appear to allow an interpretation to the effect that the individual interests of the spouses and children take precedence, society's loss of interest in preserving the marriage being a consequence of the individual's interest in terminating it; society's disinterest would therefore no longer constitute an independent ground

for divorce. However, such an interpretation of Article 24, para. 1, is, first of all, not imposed by the wording itself, and, also cannot be reconciled with the spirit of the law as expressed in the Preamble and statement of principles. Such a radical transformation in legal concepts would moreover conflict with the legal system of the German Democratic Republic in general.

The question of *maintenance* following divorce is regulated in such a way as to preclude, in general, one party's having any claim against the other. This is further confirmation that the law is based on the assumption that the wife will engage in an occupational activity; thus, even if during her marriage she undertook household work only, on divorce she has no other recourse but to take up work herself. Only when the couple have been married and have lived together for at least a year, or have had a child, or when other special circumstances are involved, can a spouse who, by reason of illness, the bringing up of children or for other causes, is unable to support himself claim maintenance from the other spouse; in principle such maintenance is ordered only for a transitional period of two years, and only if the claim appears justified in the light of the standard of living of the couple, the history of the marriage and the grounds for the divorce. These highly limitative provisions make very scant allowance for the concept of guilt and in most cases will work to the disadvantage of the woman. The period for which maintenance is payable may be extended, even repeatedly; a maintenance order for an unlimited duration may also be made against one spouse, if it is anticipated that the other will be unable to engage in a remunerative activity, but only if this life-long payment can reasonably be expected of the spouse concerned *(Art. 29, para. 2)*.

The first application for maintenance may properly be lodged only during the divorce proceedings. If there is a change in the circumstances on which the amount of maintenance was based, suit may be brought for the purpose of having the obligation to provide maintenance reduced or entirely set aside *(Arts. 29 et seq.)*.

Article 35 provides that a marriage shall be void if it has been contracted despite the existence of an impediment. For the purpose of annulment of the marriage, appropriate proceedings must be brought. The grounds for nullity and its legal consequences, which are set out in Article 35, paragraph 2 and Article 36, follow the traditional approach to the matter. Similarly, the provisions respecting termination of marriage on a decree of presumption of death, contained in Articles 37 *et seq.*, reveal no unusual features.

Apportionment of the community property on termination of the marriage is generally effected by dividing the property equally between each spouse *(Art. 39, para. 1, subpara. 1)*. If the parties contest the fairness of such a settlement, the court will take their standard of living into consideration. The court may assign specific chattels or property rights to one party and require him to pay pecuniary compensation to the other. The Court is also empowered to make an unequal settlement of the property, if one of the spouses has made, through either occupational activity or household work, a corresponding contribution to it, or if one of them has need of a larger share on account of his having to bring up the children *(Art. 38, para. 1, subparas. 2 and 3, and para. 2)*. With the parties' agreement or following a court decision, the title to the chattels assigned passes to each party together with the rights and obligations pertaining to them. Similarly, a transfer of legal title in favour of the owner occurs as between the spouses in respect of objects included in the *community property*, if neither party has applied for a settlement within a year following termination of the marriage *(Art. 39, paras. 2 and 3)*.

If one of the spouses has made a substantial contribution towards increasing or maintaining the separate, personal property of the other, the court may award him, in addition to his share in the *community property*, compensation, which may be assessed at up to half the value of the separate property belonging to the party thus enriched. This right is not terminated by the death of the party liable. It lapses with the death of the party entitled to claim, but his children who are not also children of the spouse claimed against may be allowed a claim in equity to compensation assessed at the same rate or at a lower one *(Article 40)*.

Apart from cases in which a claim is made against the *community property* by a personal creditor of one of the spouses *(Article 16)*, premature termination of joint ownership may be ordered on proceedings being brought for this purpose, if it appears to be in the general interest of the plaintiff spouse or of minor children to do so. This provision is of particular relevance if the spouses are living apart *(Article 41)*.

Parents and Children

In the introduction to the present article, it was shown that Marxist ideology gives particular importance to the education of children in a communist society. It is therefore not surprising that the Family

Code of the German Democratic Republic centres around this subject. That this is so is revealed not only by the very detailed provisions laid down in this connection—which are not altogether free from repetition—but also by the fact that not only is the communist scale of values given prominence in the relevant Chapter but, to a greater extent than in other sections, it is expressed in so many words. The goal should not be merely to develop the child's initiative and moral qualities in order to make him an upright member of society—such a goal, limited to a passive concept of life, would be too narrow. The essential duty of parents and society (as stated in Article 3 of the Family Code) is to direct the child's education towards his becoming 'an active builder of socialism'; this duty is subsequently described in detail in Article 42, as follows:

> The education of children is an important civic duty incumbent on the parents, for the discharge of which they are accorded recognition and honour by the State and by society. The aim is to bring children up to be persons of high intellectual and moral integrity and of sound physical health, who will make a conscious contribution to social development. By discharging their educative duties in a responsible manner, by their own example and by adopting a consistent attitude towards their children, parents will teach them to have a socialist outlook, to learn and to work, to have respect for Man the worker, to observe the rule of socialist coexistence, to practise solidarity and to uphold socialist patriotism and internationalism.
>
> The education of children is inseparable from the inculcation of such qualities and standards of conduct as modesty, honesty, helpfulness and respect for age. It also includes preparing them for a subsequent responsible approach to marriage and their family.
>
> In discharging their duties concerning the upbringing of their children, and in order to ensure consistency in educating them, parents shall co-operate closely and confidently with schools, with other educational and training institutions, with the 'Ernst Thälmann' pioneer organization and with the Free German Youth movement and shall support the efforts of these bodies

In addition to the State and social organizations mentioned in paragraph 4 of Article 42, the duty of participating in the upbringing and education of children is also incumbent on other organs, particularly on the work collectives of each parent and on the house communities *(Article 44)*.

As stated in Article 9, parents exercise jointly the right to educate their children. If one parent dies or loses the right, the other parent exercises it alone. If both parents are dead or have both lost the right to educate the children, it can be transferred by the Youth Assistance authority to the grandparents or to one of them. In the event of divorce, the Divorce Court decides to whom custody shall be given, acting in the light of the proposals made by the parties or, if they fail

to reach agreement, following consultation with the Youth Assistance authority *(Art. 45, paras. 1-3, 25)*; at the same time the court sets forth in detail what maintenance shall be paid by the other parent, whose right of access to the child cannot be withdrawn *(Article 27)*. A court ruling may also be applied for, if separated parents cannot reach agreement on the exercise of the right to custody *(Art. 45. para. 4)*.

If the parents are guilty of serious breaches of parental duty, the children may be withdrawn from their custody under a court order, following proceedings brought by the Youth Assistance authority *(Art. 51, para. 1)*. If the neglect of parental responsibility is not so serious, but the education, development or health of the child nevertheless appear to be endangered, and would not be assured even with the intervention of State or social organs, the Youth Assistance authority may take appropriate measures, which may, if necessary, be implemented outside the child's home *(Article 50)*. If a divorce is granted and the Divorce Court is unable to assign the right of custody to either parent, because of serious culpable neglect endangering the child's development, the order made by the court must provide for the withdrawal from both parents of that right. If the neglect is not so serious, or if there are special circumstances, the order may provide for the right to be withdrawn from both parents for one year. On expiry of this period, the court will take a final decision in the case after consultation with the Youth Assistance authority *(Article 26)*. If a change occurs in the circumstances, a right of custody which has been withdrawn may possibly be restored, if this is in the child's interest. Before any of the foregoing decisions is taken, the child, if sufficiently mature, must be heard by the Youth Assistance authority. Examination of the child by the court is permissible only if the child is over fourteen *(Article 53)*.

The protection extended by the Code to illegitimate children reflects modern legal concepts. The right to bring the child up rests with the mother; but if she dies or loses the right, it may be transferred by the Youth Assistance authority to the father, to the grandparents or to one of them. The father's duty of maintenance is in no way limited and is the same as that for a legitimate child *(Article 46)*.

The law of 20 December enacting the Family Code, which *inter alia* provides for transitional measures and settles Conflict of Laws questions, establishes an equitable, even though limited, right of succession of the illegitimate child to his father's estate (Article 9). The firm attitude adopted by the law in favour of the illegitimate child even goes so far as to protect the child against discrimination arising

out of the use of the term 'illegitimate', in that the child is no longer described as such, a paraphrase must be employed ('a child whose parents were not married to each other at the time of his birth'—*Article 46).*

In the case of step-children, the Code provides that on the death of the natural parent, the right to bring the child up may be transferred to the step-parent *(Article 47).* The Code makes an especial appeal to step-parents to consider themselves fully responsible for the education of their step-children *(Article 47).*

Paternity, Adoption and Relationship

The husband of the mother is regarded as the father of a child born to her during the marriage or within 302 days—the maximum legal duration of gestation—following termination of the marriage, evidence that sexual intercourse had taken place between the parties during that period need not be adduced. If the woman has remarried during this period the presumption of paternity applies to her new husband. The man thus regarded as the putative father is entitled to bring proceedings before the court in order to have this presumption rebutted. The mother of the child and the Attorney-General may also challenge the presumption of paternity. The period allowed for the bringing of such proceedings is one year; it commences at the time the plaintiff learns of the facts on which the suit is based, but in no case before the birth of the child *(Arts. 61 et seq. and Art. 54, para. 5).*

For affiliation proceedings, the Code provides a unique compromise solution designed to avoid the situation in which the paternity of an illegitimate child is decided on a kind of statistical basis. A proven impossibility of conception defeats an affiliation action. In default of this, the alleged father may bring evidence of the promiscuous conduct of the mother; but in this case the action, with all its consequences in respect of maintenance rights, will not automatically fail: an official investigation is undertaken which, in the final analysis, must, on the balance of probabilities, attribute paternity to one of the persons implicated. Even compared with the strict rule of *exceptio plurium*, or with the joint liability of all parties concerned, as provided for in some legal systems, such a method of proceeding is certainly questionable *(Art. 54, paras. 1 and 2).*

Extra-marital affiliation follows either from acknowledgement of paternity or from a judicial ruling. An acknowledgement of paternity may be disputed in the courts by the mother, the guardian of the child

or the man to whom paternity had previously been attributed *(Arts. 55 et seq.)*.

In contrast to the provisions of the first draft, but in basic accord with those in the second, adoption no longer becomes effective in law through the contract of adoption, which required official ratification, but merely through an administrative act, namely a decision of the Youth Assistance authority, taken on the application of the parties concerned. A necessary condition is that the adopting parent be of age and the adoptive child a minor. There is no prescribed minimum age for an adopting parent, but there should be an appropriate difference in age. There is no requirement that the adopting parent should be childless. The necessary agreement of the parents, including the agreement of an unmarried father having the right of custody, may also be given without their knowing the adopting parent. There are the usual provisions respecting the name of the child, the legal effects of adoption and its revocation *(Arts. 66 et seq.)*.

Relationship by blood and marriage is provided for in the usual manner in the Code; however the entitlement to maintenance and liability therefor are restricted to relatives in the second degree. For this purpose, children and grandchildren are entitled to maintenance before parents and grandparents, but are also primarily liable to pay maintenance: children before grandchildren, parents before grandparents. There is also a subsidiary liability to pay maintenance on the relatives of a spouse, whose partner cannot provide maintenance having regard to his other obligations, without prejudicing the adequate maintenance of himself. The amount is determined in the light of the standard of living of the parties concerned and the capacity of the party liable to provide maintenance; in determining this capacity, regard must be had to the expenses incurred in connection with his social and occupational activities. In the case of neediness caused by the spouse's own fault or of previous neglect of an obligation of maintenance towards the spouse now liable for maintenance, the amount of maintenance may be reduced or it may be set aside entirely. Maintenance may be in the form of a cash payment or, with the agreement of the beneficiary, in the form of board and lodging in the other's home. Payment in kind is also allowed by way of exception *(Arts. 79 et seq.)*.

Guardianship

A guardian is appointed for a minor in respect of whom no one possesses the parental right of upbringing. The Youth Assistance

authority is empowered to place the minor under guardianship and to supervise the guardian. It may itself also assume the guardianship. If it does not do so, a relative or citizen from the child's immediate circle, who appears qualified for the task, is appointed guardian. If such a person is not available, an otherwise qualified person will be appointed, where possible on the advice of the social organizations or collectives. It is a specific duty of the guardian to co-operate with all bodies responsible for the education of the child and to consult the Youth Assistance authority. If the guardian has been appointed on the proposal of a social organization or collective, it becomes the duty of that body to assist and supervise the guardian. The administration of the estate by the guardian and the supervision of his administration are provided for in the usual way. The usual provisions also apply to the termination of guardianship, premature dismissal of the guardian on account of neglect of duty and to the presentation of the final statement of accounts *(Arts. 88 et seq.)*. The rules relating to the appointment, functions and termination of office of a temporary guardian are set out and correspond to those in the German Civil Code. In accordance with these provisions, recourse is had to a temporary guardian when a child has parents or a guardian possessing the right of education, who, however, are prevented by considerations of a practical or legal nature—conflict of interest or the like—from exercising that right or from undertaking certain transactions on behalf of the minor concerned *(Article 104)*. Provision is further made for guardianship of persons who have attained their majority *(Arts. 98 and 105)*.

KIDNAPPING INCIDENTS

A State's powers of law enforcement are part of its territorial sovereignty and, like its territorial sovereignty, they come to an end at the State's frontiers. A State may confer the right to exercise police powers within its own territory on a friendly neighbouring State in order to prevent smuggling, for example; apart from such exceptions territorial sovereignty is unlimited. As early as 1773, in his work: *The Law of Nations or the Principles of Natural Law Governing the Behaviour and Practice of States*, the great jurist, Vattel, wrote:

> Not only is it unlawful to usurp another's territory, there is also an obligation to respect it and to forbear from any act infringing its sovereignty, for no Nation may assume any rights thereover. To enter another's territory under force of arms in order to pursue and abduct a wrong-doer is to commit a tort against that State.

It should be borne in mind that an abduction carried out on foreign territory constitutes a violation of two fundamental principles of international law; first, the abduction undermines the territorial sovereignty of the State on whose territory it is carried out and, second, it is contrary to one of the fundamental rights of the individual who has received asylum in the State whose sovereignty has been infringed, namely, the right to 'liberty and security of person' (Article 3 of the *Universal Declaration of Human Rights)*.

However, while there are few rules of international law as well established as the one prohibiting abductions on foreign territory, there are equally few that have been violated so regularly. Examples need not be taken from ancient times or from the Middle Ages; the kidnapping of the Duke of Enghien is, even today, notorious, owing to the feeling of revulsion which swept through France and Europe when it was announced that he had been executed on 21 March 1804 at the Château de Vincennes, shortly after he had been abducted in Baden on the orders of Napoleon I. No one has forgotten the kidnapping of Eichmann in the suburbs of Buenos Aires on 11 May 1960, or that of Argoud in Munich on 25 May 1963, in both cases by

' persons unknown '. There have been several more kidnapping incidents, recently.

It is not the intention of this article to set out the applicable rules of International Law, [1] but to examine the recent cases.

A characteristic of some of the more recent incidents is that they have taken place when the person or persons concerned were in aeroplanes. These are, in principle, no different from abductions on board ships and are subject to the same legal rules as if they had occurred on foreign territory. For convenience, however, it is proposed to examine first the abductions that have taken place on a State's territory before dealing with abductions from aircraft.

I. Abductions from foreign territory

On 4 July 1967, the world press reported the disappearance of seventeen South Korean nationals living in the Federal Republic of Germany; there were rumours that staff of the South Korean Embassy at Bonn might not be totally free from involvement. On the same day, eight more South Korean students residing in France were reported to have disappeared. The circumstances of these disappearances were not all identical. Physical violence was not used in every case. In some cases, for instance, the student was asked to go to the airport in order to say good-bye to a friend leaving for Seoul, or he received an invitation to visit Seoul with all expenses paid. Only when such invitations were declined, were more violent methods used to achieve the same purpose. Such was the growing tension between Bonn and Seoul that the possibility of diplomatic relations being broken off could not be excluded. As far as the Federal Republic of Germany is concerned, the incident appears now to be closed, since on 25 July the South Korean Government made an official apology to the Bonn Government. It also gave an undertaking to ' facilitate the return of those Koreans who had been taken to Korea *against their will* and who wished to return '. The South Korean ambassador at Bonn was, however, obliged to leave.

Referring to the abductions from France, the South Korean Embassy in Paris stated that the eight South Koreans who had

[1] Such a study can be found in the *Journal* of the International Commission of Jurists, Vol. VII, No. 2, under the title: *Abductions effected outside National Territory*, by D. Marchand.

disappeared in June had in fact gone to Seoul of their own free will. Nevertheless, three of the students stated in Paris that, although there had been no physical pressure in their case, they had been subjected to moral pressures to go back to Seoul. In Seoul, they had been imprisoned and interrogated. Later, after having been found free of any guilt, they had been released and had returned to Paris. The uncertain fate of those who are still in Korea and the anxiety of others living in Paris makes it impossible to treat the matter as closed, particularly since an action for illegal arrest and imprisonment has been filed with the Public Prosecutor for the Seine by friends of one of the young Koreans who had disappeared. In reply to a formal Note of Protest delivered by the French Foreign Secretary to the South Korean Embassy in Paris, the Seoul government made an apology for the action taken by Korean agents in France to make their nationals return home; it gave an assurance that in the future such conduct would not recur, that measures would be taken against the embassy staff responsible and that nationals who had left France under these conditions would be able to return immediately.

The kidnappings of the South Koreans referred to above provide an excellent example, in that the two elements necessary before an illegal arrest becomes abduction in law were present; first, they were carried out by agents of a foreign country on the territory of another State; in the second place, individuals were taken out of the territory where they happened to be (from France and West Germany to South Korea).

Since these two elements were absent in the Ben Barka case, it cannot be described as an abduction, since the investigation never established whether or not Mehdi Ben Barka was taken out of French territory. Because there was no evidence of this, charges were brought for false imprisonment, a strictly domestic offence governed by national law. There was another feature of the Ben Barka case which, had it been established, would have also prevented it from being an abduction in law, namely, the alleged participation of agents of the French State. If persons acting as agents of the State take part in an illegal arrest on its territory, the State is held to have acquiesced in the arrest, and is thus precluded from protesting against a violation of its territory; this rule was established by the Permanent Court of Arbitration at The Hague in the Savarkar case of 1911.

A further aspect of great importance in the South Korean cases lies in the way that they were settled; in both cases

reparation was made for the two violations of international law. Reparation for the violation of territorial sovereignty was constituted by the apologies and the promise to punish those responsible, made by the South Korean Government to West Germany and France; this is an acceptable form of ' satisfaction ' under international law. Moreover, the rights of the individuals abducted were safe-guarded by the South Korean Government's promise to facilitate their return to West Germany and to France; it is now up to these States to see that this is done.[2]

These incidents show that an abduction is contrary to international law, whatever the methods—whether forceful or not— that have been used; the United Arab Republic therefore committed an abduction when it invited twelve members of the Yemeni government to come to Cairo ' on an official visit '; the members were then arrested, including the prime minister, but have now been freed.

On 13, 27 and 31 August 1967, there were incidents on the Austrian-Czech frontier. On the first occasion, eight members of the same family attempted to cross the frontier and were shot at by the Czech guards when they were already on Austrian territory. Seven were injured but succeeded in escaping. The eighth, a child aged 12, was caught and taken back to Czechoslovakia. The second case involved four East German nationals who tried to cross a river dividing Czechoslovakia and Austria and were fired upon by Czech guards when they were already on the Austrian bank. One was killed, the other three are safe and sound. A number of soldiers, with bayonets fixed, were seen by witnesses swimming to the Austrian bank to pursue the fugitives. The third case was akin to the second. Two Poles tried to cross a river frontier. One succeeded, the other died. After strong protests from Austria, the Czech government allowed the child who had been caught at the frontier on August 13 to rejoin his family. These unhappy incidents are comparable with the many equally unhappy ones that have occurred at the Berlin Wall. The rules of international law are no less strictly applicable in such cases, as is illustrated by the Brignon case. Brignon, a beater, was shot dead while in France, by a German guard standing in Lorraine. (Lorraine was under German

[2] In November, it was learnt that some of these South Koreans had been held in Seoul and had been put on trial.

sovereignty at the time). When France protested, Bismarck apologized and offered compensation of fifty thousand gold francs, at the 1887 rate of exchange, the full amount of which was given to Brignon's widow.

On 14 October 1967, a British police inspector at Hong Kong who had gone to investigate a complaint by Chinese peasants concerning the position of a barrier near the Chinese frontier post, was dragged by the peasants into Chinese territory. Great Britain at once took steps to have the officer freed. He was in fact released a few weeks later.

II. Abductions from Aircraft

Abductions from aircraft fall into two categories, according to the degree of violence used. There have been occasions when advantage has been taken of routine landings on national territory by aircraft whose passengers have been the object of arrest warrants. There have been cases of aircraft carrying such persons being forced to land on national territory or on the territory of a friendly State.

A. *Routine Landings*

Routine landings include an airline's scheduled stops and landings due to technical defects of the aircraft or bad weather.

Abductions from an aeroplane making a scheduled stop are not uncommon. In 1963, for instance, Captain Curutchet, the OAS leader sought by France, was flying from Switzerland to Uruguay; he had been given a passport and had had his flight paid for by the French embassy at Rome. When his aircraft landed at Dakar, he was arrested by Senegalese personnel under the command of a French officer, taken to France and sentenced to life imprisonment.

On 29 October 1966, the Guinean delegation led by the Minister of Foreign Affairs was arrested on landing at Accra on the way to the OAU Summit Conference at Addis Ababa. Various pressures were applied and on 5 November the delegation was released in time to attend the OAU meeting whose start had been delayed.

On 31 October 1966 there was a case of abduction from an aeroplane that had landed at Prague owing to a technical defect, (the facts of this matter have since been disputed). Mr. V. J.

Kazan, an American citizen of Czech origin, was removed from a Russian aircraft belonging to Aeroflot. In 1963, he had been accused in Prague of high treason, spying and attempted murder. On 1 February 1967, he was sentenced by the High Court of Prague to eight years imprisonment, but was immediately released and allowed to leave the country.

On 27 June 1967, Radio Conakry announced that the Guinean delegation, on its way back from New York after attending the United Nations General Assembly, had been summarily arrested at Abidjan, where its Conakry-bound aeroplane had been forced to land because of bad weather. The delegation included Mr. L. Beavogui, the Foreign Secretary, and Mr. A. Maroff, the permanent representative of Guinea to the U.N. This action followed the seizure by the Ivory Coast of a Guinean trawler which was in its territorial waters; the crew had then been charged with the attempted abduction of Mr. Nkrumah, former president of Ghana. After much pressure the vessel was allowed to leave Conakry, at the same time a national of the Ivory Coast who had been held in Guinea since 1965 on a charge of subversion, was also freed. The Government of the Ivory Coast then freed all the Guinean nationals being held in its territory, among whom were the two Ministers.

These unlawful arrests carried out by State servants after routine landings of aircraft are abductions properly so called, since they fulfil the two conditions described above. They were performed by agents of one State on board aircraft registered in a third State that had landed on territory of quasi-international status, and the persons arrested were removed from the aircraft. These abductions are reprehensible in themselves, and all the more so when they have been committed after an aircraft has been forced to land by circumstances beyond its control. In a case concerning shipwrecked detainees in 1799, the French Consuls declared; ' Civilized nations do not stoop to take advantage of a shipwreck in order to deliver its unfortunate survivors into the hands of justice '.

B. *Forced Landings*

The more sensational kidnapping incidents have been effected by means of forced landings. The first and most striking example is the abduction of Mr. Ben Bella, whose aeroplane was seized while it was over the high seas, travelling from Tunisia to

Morocco by a route that did not involve flying over Algeria, which was at that time under French sovereignty. Mr. Ben Bella and his associates were taken to France under arrest.

A similar act was committed against the person of Mr. Moïse Tshombe. The former Congolese Prime Minister, sentenced to death by the Congo in his absence, had taken up Spanish residence. On 1 July 1967, he was travelling by private aircraft between two of the Balearic islands, when his pilot was forced to alter course and to land in Algeria. As soon as it was known that Mr. Tshombe was in Algeria, the Government of the Congo made an application for his extradition, which was favourably received by the Algerian Supreme Court.

This decision leads us to consider other decisions by judicial organs before which an abducted person is brought. Some have attempted to validate the proceedings by relying on the principle enounced, in surprising terms, by the United States Supreme Court in *Ker v. Illinois* (1886): that the physical presence of the accused before the Court is sufficient to validate the proceedings notwithstanding the manner in which he was brought to trial. However, this judgment is incompatible with current trends in international law and in particular with the law of Extradition, which was precisely the issue before the Algiers Supreme Court. The only legal means open to a State for obtaining the presence of a person, is to apply for his extradition from the State where he is living. Indeed, the United States Supreme Court recognized this principle in *United States v. Ferris* (1927), when it ruled that an arrest outside territorial waters (during Prohibition) ought not to be recognized by the Court for the purpose of proceedings against the defendant. The Bordeaux Court of Appeal applied the same principle in the *Jaborille* case, as early as 1904, when it held that Jaborille ' could not be legally arrested by the French Authorities before his extradition had been requested and obtained under the terms of international treaties, or until he returned to France of his own free will' .

When this principle is applied to the Tshombe case, it follows that the only course of action open to the Democratic Republic of the Congo for obtaining custody of the former Prime Minister was to make a lawful application to Spain for his extradition from Algeria, after he had been abducted from Spain to Algeria. In such a situation, the Algiers Supreme Court should have given a similar decision to that of the Bordeaux Court of Appeal in the

Jaborille case: that Mr. Tshombe had been brought before it in an unlawful manner and that it could not therefore allow the application for extradition. It should then have granted him a safe-conduct and time to leave Algeria. (Jaborille was granted fifteen days to cross the frontier). Pressure was applied on Algeria from all sides in the Tshombe case. The British government took a strong position over the two British pilots of the aeroplane and obtained their release on 23 September 1967; the Belgian government obtained the release of two of its nationals on board the aircraft. The only persons now held in Algiers are Mr. Tshombe and a Frenchman, Mr. Bodenan, the alleged organizer of the kidnapping.

III. Safeguards for the rights of the individual

When a person has been brought to another State as a result of coercion or inducement, by agents of that State or with their consent, the abduction must be considered to be in breach of international law, inasmuch as it violates the rights of the State with sovereignty over the territory or over the aircraft from which the abduction took place. It also infringes the abducted person's fundamental right to freedom.

The injured State should obtain adequate reparation for the damage to its sovereignty and take diplomatic action in favour of the release of the person deprived of his liberty, to whom it had granted, albeit tacitly, permission to reside in its territory.

If the injured State decides not to seek redress (because it is prepared to overlook the violation of its territorial sovereignty, or because it is in a position of inferiority in regard to the State whose agents were responsible for the violation), the courts of the State which instigated the abduction should immediately set free the person concerned and allow him to go to the country of his choice; not to do so would be to ratify a violation of International Law and would vitiate the entire proceedings and any decision subsequent to it.

Should such a decision not be made in his favour, the victim of an abduction ought to be able to seek redress before an international body, which would remedy the failure of the national judicial organs. Such action for redress should, of course, only be permitted after the victim has exhausted all national remedies open to him. Decisions by international courts

would serve as a guide for national courts and would thus lead to the fundamental right to freedom, as guaranteed by the principle of asylum, being upheld before any court before which the victim presents his case.

The European Commission of Human Rights is an example of such an international body: the European Convention is an international instrument which sets out a number of fundamental human rights, and establishes international machinery for their legal protection. It is, for all practical purposes, the first time that the ordinary citizen has the right of bringing his case before a permanent, international, judicial body.

The Commission has had to consider a great number of cases concerning the right to asylum, deportation and extradition. Since there is no direct provision in the Convention protecting the right to asylum, reliance has been placed on the provision against inhuman treatment (Article 3), in order to raise the question before the Commission. By a decision of 6 October 1962, the Commission recognized for the first time that the deportation of an alien to a specific country might constitute inhuman treatment. On various subsequent occasions, it has readopted its liberal position on the subject (Application 1802-63, Application 2143).

It might be asked whether a similar result would not be achieved on more satisfactory legal grounds by relying on Article 5, which provides that:

> 1. Everyone has the right to liberty and security of person.
> No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law;
> ... b) [If he is the object of a] lawful arrest or detention...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

It seems clear, then, that any person abducted from foreign soil, and therefore unlawfully arrested, can bring an application to the European Commission, and through the Commission to the Court of Human Rights; the application could be based on the inhuman treatment provision—as were the previous cases—or on Article 5 of the Convention.

The final paragraph of this Article, giving the right of compensation to the individual, is of particular importance.

Hitherto, the normal remedy has been release from imprisonment; compensation was only awarded if release were impossible, owing for example to the plaintiff's death. Under the Convention the two remedies could be considered together: first of all, release from imprisonment, and then compensation for damage suffered.

The refusal to recognize an individual's right to seek legal redress for a violation of international law, *a fortiori* when no claim is made by the injured State, is based on an out-dated conception of international law. This law today not only governs relations between States, but also gives an ever-higher place to the individual in a sphere in which state sovereignty can no longer be considered as absolute.

LATIN AMERICA

Integration, the Guerrilla Movement and Human Rights

Hunger and dire poverty are not elements conducive to the stabilized development of organized society. Furthermore, hunger and poverty lead to situations in which populations tend to turn to extreme remedies and to follow irresponsible leaderships. These situations may in turn result in cycles of violence and repression; finally, they may result in the imposition of authoritarian regimes of the left or the right in which all civic liberty is destroyed.

. . . . .

Inasmuch as under-development is the root cause of hunger, poverty and unemployment, sound economic planning is recognized as the best means of solving these problems. [1]

The International Commission of Jurists has always considered, that if the *Universal Declaration of Human Rights* is to have full application, the individual's economic and social rights, no less than his political rights, must be accorded recognition and protection by a society founded upon the Rule of Law. The position of these rights in developing countries had for some time been of particular concern to the Commission, and at its Bangkok Conference in 1965 one of the Committees was asked to study the problems arising from economic development and social progress, and to consider how such progress could be achieved within a legal system safeguarding the rights of the individual.

The Commission has, for some time also, been carefully following the process of transformation now taking place in Latin America. Here, there are serious problems in the economic and social fields; the most important question, then, is how are they going to be solved. There are two principal schools of thought: the one suggests solution by economic integration, the other by guerrilla warfare.

[1] From the Working Paper of the South East Asian and Pacific Conference of Jurists held in Bangkok in February 1965. These extracts are to be found in *The Dynamic Aspects of the Rule of Law in the Modern Age*, pages 53, para. 152 and 67, para. D. (An I.C.J. publication).

At any event, a solution must obviously be found to Latin America's many problems, which, in very general terms, could be said to have a common source in the inadequate level of economic development of the region; from this arises social injustice, which has at times reached scandalous proportions, having serious social consequences impinging upon all aspects of national life in all Latin American countries. It has moreover been clearly shown that development, so badly needed, cannot be attained, now or in the future, on the basis of existing structures. These structures indeed served some purpose in the early stages of independence of Latin American countries, but their ineffectiveness first became apparent as long ago as the beginning of this century. They have contributed to the ever-widening gap between Latin American countries and the most advanced nations of that time, some of which took advantage of the weakening structures, appropriating at least part of Latin America's wealth to bolster up their own national power.

This international pattern was repeated on a smaller scale in each country of the region. The countries, whose population growth was considerable and whose internal structures were outmoded and in practice unable to secure the well-being of the community, thus found themselves incapable of providing effective remedies for even minor social problems. At times, the generally precarious situation of the national economies — constantly aggravated by the unfavourable terms of international trade — prevented even temporary solutions in cases of utter destitution. To this should be added (with some rare exceptions) a permanent state of political instability. It can thus be clearly appreciated how much precious time was lost and how extensive was the economic retrogression of the whole region — accelerated by the pressure of its own problems and of the population explosion and corresponding inversely to the rapid development of the most advanced countries.

Peaceful Revolution or Armed Revolution?

Many Latin Americans consider that this choice is the only alternative offered to that of resigning themselves to the various problems facing the region. Today, in fact, it is probable that these are the only two possible solutions, in view of the failure of

other approaches. Armed revolution has few real proponents but enjoys an inflated publicity, whereas peaceful revolution receives limited publicity, but has a much greater number of supporters; these could be increased substantially if the concept were popularized so as to bring about an ' integrationalist outlook ', which could give a strong impetus to the whole process; it was this attitude which contributed so greatly the to success of the European Economic Community.

The successes and failures registered in the gradual process of integration are too well known to be recalled here. However, it is worth-while to dwell briefly on some points in order to show how important integration is, and will continue to be, as a means of transforming present structures in Latin America within an appropriate juridical framework fully compatible with the Rule of Law, and as a means of securing full respect for many of the rights in the Universal Declaration, which up to now have been no more than formulated.

The idea of Latin American integration has for a long time been the subject of endless discussion by Latin Americans, who see in it a complete solution to the most serious problems facing the different countries, problems which are in general similar, and (as mentioned above) are the direct or indirect result of inadequate economic development. Among its proponents, there is a wide range of opinion as to how this immense and complex project should be carried out. Some would like to see rapid economic and political integration; others prefer to stress the economic aspect and are not in favour of even partial political integration. The free play of differing views on the subject and the independent consideration of each country's separate interests have encouraged an evolution which, even if slow at times, has greatly helped to lay the foundations of the movement. The process is certainly under way, and even though its emphasis will continue for some time to be mainly on economic aspects, it cannot fail to have an influence in other fields, such as those of education, the training of technicians at all levels and in all skills for work within an integrated region, and of law—where existing legislation will need to be integrated and a legal framework set up within which the process will operate and by which it will be guided towards clearly defined objectives. This last aspect will be dealt with at the end of this article.

In any event, more and more people are coming to believe that the future of Latin American countries lies in close union and mutual cooperation, enabling them to work, to solve their problems and to be seen by the rest of the world to act as a community and not as so many isolated and disunited parts.

In this respect the most recent meeting of the Latin American Parliament, to which the International Commission of Jurists sent an observer [2] and which discussed various aspects of integration, was particularly fruitful. The report sent by the Commission's observer contained the following passage:

> Doubts concerning the feasibility of Latin American integration must be dispelled after the meeting of the Latin American Parliament. There, it became quite clear that integration is a fact—a fact which will probably be slow, perhaps very slow, to take concrete form, but which will do so beyond any doubt. When a conviction takes firm root in men it passes sooner or later from the subjective to the objective, from the psychological and intellectual to the world of fact and history... An aspect that should be stressed is that the meeting enabled personal contacts to be made between the [political] leaders of Latin America, who have promised to inform the electorate in their countries about the idea of integration, which they supported in the Latin American Parliament and by reason of which they took part in it.

It is the Commission's view that when the people in Latin America come to realize the benefits of integration, many of the obstacles to it will be more easily surmounted. When they understand that integration seems to provide the last remaining path which will be free from bloodshed, the various countries will be more inclined to forget ancient quarrels of relative unimportance and to work towards a state of well-being in which the apparently insoluble differences between some of them will be of secondary importance.

It will then be the task of the leaders of integration—professional men and women (among whom a particular role will be required of the lawyers [3]) and the politicians—to simplify figures and statistics in order to set up a genuine ideal of integration

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[2] Dr. Alicia Justo, of Buenos Aires.

[3] 'The task of formulating economic plans to remedy the endemic economic conditions that exist [in some developing countries] is primarily one for economists; the task of applying the remedies is the responsibility of governments. Since lawyers have an important role to play in the process of economic development, they should have a clear understanding of the problems involved.' From the Working Paper of the Bangkok Conference, 1965. See *The Dynamic Aspects of the Rule of Law in the Modern Age*, p. 53, para. 154.

that can be readily understood. It would be a banner around which could rally the peoples of Latin America, who in many cases have had their fill of local demagogues and the repetition *ad nauseam* of platitudes dressed up here and there to appear as Messianic revelations capable of remedying all ills.

A second task is to ensure that the process of transformation remains genuinely Latin American. It was Latin Americans who first began to speak of this idea as a principle which, intelligently applied, could not fail to yield the best results. For the idea to gain even partial acceptance, it was necessary to overcome the stubborn resistance of vested interests in Latin America and abroad. Now that a beginning has been made, care should be taken to ensure that its future benefits are wholly retained within the region and are enjoyed by its inhabitants. They must not be allowed to 'leak' abroad or to be wasted for any other reason, no matter how legitimate it might seem. Indeed, if it is accepted that integration is one of the last possible solutions to the economic problems in the region, and that their solution will contribute to an effective and permanent improvement in the economic, social and political situation of the populations, any action tending to reduce the over-all benefits achieved will at the same time prejudice the results of the effort undertaken.

Latin America itself is immensely rich in natural resources of all kinds; if, through some form of common market, these resources can be exploited for the benefit of the whole region, Latin America will have no need of outside help to maintain itself. Self-sufficiency could be considered the first stage of its development; the region would then be on a footing of equality in its relations with other more powerful countries; it would not only be able to protect its own interests and those of its inhabitants (who at present growth rates will number 600 million by the beginning of the next century), but would also achieve effective political and economic independence. It would not be dragged into conflicts created by others and of no concern to itself, but it would rather, by holding the balance between the two sides, be able to exercise a decisive influence, and contribute thereby to the cause of world peace; in addition, its policy of non-interference would avoid the consequences of such conflicts and would thus safeguard its survival.

In contrast to the trend towards integration, another movement has attempted to establish itself in the region,

especially in recent times, emphasizing its Latin American character; this is the so-called ' war of national liberation ' or ' guerrilla movement '.

However, a more thorough analysis from a different viewpoint, reveals a most regrettable reality: that Latin America is once again being exploited, lending itself as a battle-ground for the great world powers, cunningly disguised behind the peoples and problems of Latin America.

The supporters of the guerrilla movement base their policy on genuine problems, mainly those relating to poverty which has existed for too long a time. Considerable progress has, it is true, been made in some countries to alleviate poverty, but it is equally true that in other countries politicians have used these problems as electioneering material, and on coming to power have seemed to be more anxious to consolidate party-political positions, rather than to bring about the concrete solutions which they had promised.

The guerrilla's policy is also directed towards the abolition of existing structures, whose inefficiency has in present times been more than amply demonstrated. His supporters incite those whose claims have been unjustly deferred and who can see no escape from their condition to transform their understandable frustration into hatred and violence. These are first aimed at those who hold economic power and at existing institutions, but as they gain momentum, they include the indiscriminate elimination of political opposition. The real contradiction in the guerrilla's policy is that he puts forward no concrete solutions for the time when weapons are replaced by the tools of work and production.

The only way to be rid of the guerrilla movement is to eradicate its causes. When Latin America has succeeded in putting an end to its overwhelming social imbalance by an equitable distribution of its wealth, when poverty has been completely overcome, the guerrilla movement will cease to be—or at least that form of it purporting to solve social problems, which up to now have been considered permanent, by means of violence. Another kind of movement which uses guerrilla warfare as a political tactic will always exist; this kind emanates from political groups in genuinely democratic countries, which, unwilling to participate in national life by legal means,

resort to violence in their claim to power, which popular support has denied them.

Whatever the action taken by a country against guerrilla movements on its territory, to receive outside help in the form of advisers or material aid is certainly ill-advised, for any such movement, no matter how insignificant, can receive unexpected strength once a foreign ' presence ' is involved; it will also enhance the prestige of the guerrilla, who will then—and not without reason—begin to appear as a ' national liberator '.

There is, therefore, all the more reason to keep the integration movement wholly Latin American; otherwise political failure is inevitable. Any subsequent assertion of independence, no matter how solemn, will be to no purpose. Latin America must bring about its own development, and its inhabitants must put an end to the poverty stifling the region. It is moreover undeniable that only Latin Americans can make the necessary sacrifices in the collective effort, since they alone have the incentive of a better future. Foreign aid will, unless the methods of channelling it are radically altered, lack this basic motivation; it will again prove to be an excessive burden financially and politically: it will give rise to hatred, political problems and unfair pressures, and worse, it will frustrate the final objective by indefinitely postponing the day when Latin America will be on an equal footing with the more developed countries; the form which its international relations should take has been repeatedly expounded in admirably frank and clear terms by Dr. Raul Prebisch, Secretary-General of the United Nations Conference on Trade and Development (UNCTAD).

Integration and Human Rights

The Declaration signed by the heads of American states in Punta del Este on April 14, 1967, in which it was decided to establish a common market within 15 years from 1970, marks an extremely important step forward in the process of Latin American integration. The auspicious results already obtained by LAFTA (Latin American Free Trade Association) and the Central American Common Market will serve as a basis for the future common market, mainly in the economic field. The separate projects for the development of these communities can now be combined in a single endeavour designed to benefit the whole region.

An aspect of vital importance for the future common market is the preparation of a legal framework to solve the complex legal problems resulting from the Market and to enable the process of integration to operate dynamically and effectively. An important stage in this respect will be the integration of the legal systems. This will be a complex task, involving the reconciliation of various elements such as existing legislation, the bulk of which will be anachronistic since it was created to meet the quite different needs of separate and independent national structures. The legislation thus amended will be required to facilitate the quick solution of problems relating to the common market, though a considerable part of it will continue to apply to purely internal questions; in many cases this will entail the adoption of new legal concepts. A large part of the legal structure could thus be reformed, rather than (as happened in the past) adapted to the times now and again by means of ill-conceived amendments, which always respected the substance of an outmoded provision that happened to be the pride of a particular legal body.

The adoption of new legal concepts will, it is hoped, eventually bring about a new socio-political structure at the national and regional levels, having clear-cut social objectives, and setting out well-defined obligations and limitations binding both the individual and the state. A necessary consequence is the thorough reform of the courts, which should be given the appropriate powers to enforce a just and impartial system under the Rule of Law.

In this creative task of recasting the legal system, the *raison d'être* of integration must not be overlooked: it is a vehicle of socio-economic development directed towards improving the conditions of life in Latin America. The object of the whole movement is Man. The laws should be revised and reformed in such a way as to include from the beginning legal machinery ensuring the general and complete application of the Universal Declaration of Human Rights, in letter and spirit, particular importance being accorded to economic and social rights.

It is well-known that all Latin American constitutions provide for respect for human rights, setting them out in detail. Unfortunately, in many cases the force of circumstances prevents these provisions from being, in practice, anything more than declarations of intention. It is necessary, therefore, not only to provide effective remedies but also to plan the national structures

so that the state, even as far as its own acts are concerned, is legally bound to ensure full protection to certain of the rights in the Universal Declaration; by doing so, it will give its citizens better conditions of life.

In conclusion, it is appropriate to quote one of the leading promoters of Latin American integration, who recently said: [4]

> Let us with faith strive to set Latin America on the road towards the adoption of political concepts based on respect for the human person, on observance of the law, on the wide and unlimited participation of all citizens in public affairs, and on the recognition of the social and economic rights accorded by the most advanced modern states.

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[4] Felipe Herrera, President of the Inter-American Development Bank, at a lecture given in Santiago (Chile) on June 17, 1967.

HUMAN RIGHTS LEGISLATION IN RUMANIA

When the new Constitution of the Socialist Republic of Rumania was promulgated on August 21, 1965, the *Bulletin* of the International Commission of Jurists (No. 23, August 1965) noted that it was a 'remarkable step forward in the constitutional development of Rumania'; its provisions, 'if fully implemented at all levels of public life' could 'open the door for interesting legal developments'.

The authors of the Constitution showed an increasing concern for safeguarding the rights of the citizens. Chapter II contained a list of fundamental rights and duties of the citizen, which broadly followed the pattern set by the *Universal Declaration of Human Rights.* These rights were to be realized by means of certain constitutional procedures: the right of petition *(Article 34)*, and recourse to the courts, which 'by reason of their judicial role defend the socialist system and the rights of the citizens' *(Article 95)*. The courts, under Article 96, were to exercise control over decisions of administrative or public bodies having judicial or quasi-judical functions in cases provided for by law. Article 35 established the citizen's right to damages, where his rights had been violated by illegal administrative acts.

The human rights in the Constitution were set out in very general provisions: their detailed regulation was to be the subject of subsequent legislation. For nearly two years, no such legislation was passed, and this occasioned some concern among certain Rumanian legal writers.

Two recent laws, however, have marked the beginning of the laborious task of implementing the Constitution: a Decree, No. 710 of the State Council, was issued on July 21, 1967 (*Official Bulletin* No. 65, July 22, 1967) reorganizing the Security Police and the Ministry of the Interior; and a new Act was passed by the Great National Assembly on July 26, 1967, implementing Articles 35 and 96 of the Constitution, concerning claims of citizens against illegal acts of the administration.

The Security Police

The activities of the security organs had been severely criticized recently by Nicolae Ceausescu, Secretary-General of the Communist Party of Rumania (Scanteia, 18 July 1967):

> For some time in the past, attempts have been made to minimize the seriousness of certain unlawful acts and abuses [committed by security organs]. It is known that a number of shortcomings and defects still persist in various fields . . . It is true that in recent times these shortcomings and defects have

been the subject of serious criticism from the Party and State leadership and also from public opinion . . .

We are making sure that political, economic and social measures can no longer be taken by a single person, whoever he may be, but must be the result of collective judgement and thinking. We are stressing all this, since it seems that in the past the question of the Ministry of the Interior's functions has not been sufficiently understood.

In order to remedy the shortcomings mentioned above, the 'Department of State Security of the Ministry of the Interior' was put under the control of a new 'Council of State Security', created by Decree No. 710 of 1967 *(Article 3)*. Members of this Council and its President, who holds ministerial rank, are appointed by the Council of Ministers. The Council is responsible to the Party and to the State for all the activities of security organs, including those of the security troops. Moreover, the armed units under the command of the Ministry of the Interior have, in the past years, been considerably reduced: border-guards and anti-aircraft troops have been transferred to the command of the Ministry of Defence, (Decrees Nos. 759 of 1964 and 711 of July 21, 1967, respectively). Security troops remain under the control of the Ministry of the Interior, subject to the supervision of the Council of State Security. Henceforth, the statutes applicable to members of the armed forces will also apply to the personnel of the Security Police *(Article 11)*, which seems to imply that the Security Police had previously had certain privileges.

Detailed provisions are aimed at the elimination of the special status of the Security Forces, and at assuring that the powers of State will be under the control of the two leading political organs in Rumania: the Communist Party and the Government. A complete reorganization of the Security Police would decisively contribute to the dismantling of a police state in Rumania, which had been built up and consolidated in the Stalinist period. The importance of such a development was clearly spelled out in the speech of the Secretary-General of the Party, already referred to:

The national and international, and political and social implications of legislation in the field of State security clearly affect the country, the Party and the whole of Society.

The Acts of the Administration

The law on Adjudication of Complaints on Illegal Administrative Acts of July 26, 1967, implementing Article 96 of the Constitution, gives the courts jurisdiction to hear disputes between a citizen and administrative organs or public bodies. A citizen may bring an action, if he has suffered damage from 'an illegal measure taken by an ad-

ministrative body, or from an unjustified refusal to satisfy his rights, or from a failure to settle a lawful claim'. The scope of this law is, however, severely limited by its section 14, which provides as follows:

> The provisions of the present law do not apply to:
>
> *a)* administrative acts taken in the defence of the country, or for the maintenance of state security and public order;
>
> *b)* administrative acts in the field of economic planning;
>
> *c)* administrative acts of a judicial character and such other acts which, according to law, will be adjudicated by another body;
>
> *d)* state organizations.

The legal remedies open to the citizen seem therefore to be limited mainly to the field of individual social rights, in particular, as has been indicated in recent legal literature, to matters of pensions and social security benefits. The scope of application is, moreover, limited in time: it does not apply to administrative acts issued prior to its publication *(Article 18)*.

The Minister of Justice, in his report on the Bill to the National Assembly, also stressed that the remedies given by the Bill only concern individual administrative measures taken by administrative organs and not the legality or constitutionality of administrative rules or regulations. These can only be revised by the higher authorities in the administration, and in the last instance by the Council of Ministers.

Within the restricted field outlined above, the courts have power to review the case, and to subpoena those who are responsible for illegal acts and those who may be interested parties *(Article 8)*. They are empowered to grant damages and to impose a fine of 100 lei * per day on an administrative body who is guilty of an unjustified delay in the handling of complaints.

The law on the Adjudication of Complaints for Illegal Administrative Acts, which was enacted after the considerable interval of two years following the promulgation of the new Constitution, covers a limited but very important part of public life. Its significance is far greater than would appear at first sight: it can be seen as the first step towards the implementation of the human rights provisions in the new Constitution, and promises the citizen remedies outside those belonging to the classical fields of criminal and civil procedure. The Decree and Act referred to above might well be a signpost towards further development in the field of human rights; their implementation deserves to receive the interest and attention of jurists.

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* At the official rate of exchange for tourists, this would amount to US $16 or £6:12: 0 UK.

ICJ NEWS

INTERNATIONAL YEAR FOR HUMAN RIGHTS

THE BANGALORE CONFERENCE

The first large international meeting devoted to Human Rights Year 1968 will be held in Bangalore (State of Mysore, India) from January 10 to 14 1968. It will be a Conference of lawyers organized by the Mysore State Commission of Jurists in co-operation with the Indian Commission of Jurists and under the auspices of the ICJ. The subject of this Conference will be Freedom of Movement: a subject which is often of real importance, today, since many governments find themselves confronted with political and technical problems arising from it, which are sometimes far from easy to solve. The Conclusions of the Conference are expected to make a particularly interesting and useful contribution to the solution of these problems and, on the basis of the Rule of Law, to provide general principles and procedures to be followed. The Indian lawyers will be joined by many colleagues from North and South America, Europe and other parts of Asia.

The work of the Conference will be divided between two committees: the first to study Freedom of Movement at the national level (that is, within the frontiers of one's own country), the second, at the international level (Freedom to leave one's own country and travel to another). The committees' conclusions will then be discussed at a plenary meeting, which will draw up the Final Conclusions; these will be published, if possible, in the next issue of the *Bulletin*.

An Advisory Committee will also be set up to look into the possibilities of forming a ' Council of Asia '; this would be organized on the lines of the Council of Europe—which has already proved its worth in Europe, particularly in the field of human rights—but would be adapted to meet the needs of Asia. This idea took birth at the South East Asian and Pacific Conference of Jurists, held at Bangkok under the auspices of the ICJ in 1965; it was then studied more closely at the Ceylon Colloquium in 1966. Human Rights Year would certainly be a perfect occasion to put this idea into a practicable form and to ensure that it is taken up.

CONFERENCE OF NON-GOVERNMENTAL ORGANISATIONS (NGOs)

A Conference of the International Committee of the NGOs for Human Rights Year, of which Mr Seán MacBride is chairman, has been arranged for January 29-31, 1968. It will take place at the Palais des Nations, Geneva, on a very large scale, in order to draw attention to Human Rights Year, and to encourage as many organizations as possible to take part. Whatever their field of action, all NGOs (though some to a greater extent than others) are directly affected by human rights problems, which can have

a real significance not only for their activities, but also for their whole existence.

A working paper dealing with Civil and Political rights, Economic and Social rights and Cultural rights has been carefully prepared to serve as a basis for discussions. Since the Conclusions of the Conference will be submitted to the International Conference to be held by the UN at Teheran a few weeks later, the NGOs will have to put forward practical ideas in this field, and make suggestions towards achieving a greater respect for human rights in all parts of the world.

SECRETARIAT

MEETINGS OF OTHER ORGANIZATIONS

The Secretary-General of the ICJ, Mr. S. MacBride, was invited by the Nobel Institute for Peace to take part in a ' Summit Meeting ' on human rights questions organized by the Institute at Oslo (September 25-27); many well-known personalities in this field were present. On his return journey, Mr. MacBride stopped at Strasbourg to take part in a working session organized by the Council of Europe, which had the task of deciding on a programme of activities to celebrate Human Rights Year. Afterwards, Mr. MacBride took part in the annual general meeting of the World Veteran's Federation in the Hague; this meeting adopted various important resolutions concerning, in particular, the Viet-Nam war.

Mr. Daniel Marchand, a member of the legal staff, represented the ICJ at an International Colloquium on the Recognition and Putting into Effect of Economic and Social Rights, organized at Brussels by the Belgian Inter-university Center for Public and Comparative Law and the International Association of Students in Comparative Law of the International Faculty of Strasbourg (14-17 September). There were 150 participants at this Colloquium, coming from 19 countries in Eastern and Western Europe, and North and South America.

Dr. Janos Toth, a member of the legal staff, took an active part in an international Colloquium held at Strasbourg (on 2-3 October) by the Council of Europe. The subject was the Coordination of Research Work into the Legal Systems of Central and Eastern European Countries.

PRESS RELEASES

The ICJ made a public protest and appealed to the UN against the trial which opened at Pretoria on 11 September of 37 inhabitants of South West Africa, who were charged with terrorism. The Commission deplored the fact that inhabitants of South West Africa should have been brought before South African courts, since the mandate for South West Africa had been withdrawn. Attention was also drawn to the retro-active nature of the recent ' Terrorism Act ', which has deprived the accused of all legal safeguards.

Another press release expressed the ICJ's support of the UN decision unanimously reached by the Sub-Commission on the Prevention of

Discrimination and Protection of Minorities, to set up a special Commission of Inquiry to investigate violations of human rights in southern Africa, Haïti and Greece.

The ICJ was asked by the International Press Institute to consider the situation of Mrs. Vlachos—the owner of right-wing newspapers in Greece—who is being sued on account of her decision to stop printing her newspapers. Her defence has been that the restrictive and repressive measures taken by the authorities against the Press frustrates the publication of a newspaper of opinion and constitutes a case of *force majeure*, for which she is not liable. The ICJ considered that what had happened to Mrs. Vlachos was a striking example of the present state of affairs in Greece and of the systematic violation of human rights. The Commission's opinion was set out in a long press release which stated, in effect, that a Press which is no longer free ceases to be a Press, that this fact remains true whatever the circumstances, and that the responsibility for the loss of the Press lies at the door of those who have curtailed its freedom.

NATIONAL SECTIONS

GERMANY

The German Section of the ICJ held a Colloquium of German and Austrian jurists at Regensburg from 30 September to 1 October. There were more than 80 participants at the meeting under the chairmanship of Judge Wilhelm Martens, chairman of the German Section. A large number of jurists from the Austrian section joined their German colleagues to study together the legal aspects of a state of emergency and the influence of Hans Kelsen's theory of law on the contemporary world. The ICJ was represented by one of its Vice-Presidents, Mr. Van Dal, and its Executive Secretary, Dr. V.M. Kabes.

AUSTRALIA

The ICJ was pleased to learn that the general report of the Australian National Section, submitted at its biennial general meeting held this year at Adelaide, is now being printed and will soon be available. The complete report of the Port-Moresby Conference on the future of New Guinea and Papua (of which extracts are to be found in *Bulletin* No. 25) will also be ready shortly. This Conference met with great enthusiasm and there will certainly be a demand for its report, which is a particularly useful work of reference, especially since the Section is planning to hold another Conference at Port-Moresby in 1968 or 1969. With its characteristic dynamism, the Australian Section intends to launch a periodical on a continental scale in honour of Human Rights Year 1968. This bold undertaking will be first an auspicious contribution to Human Rights Year, and in addition an effective way of gaining the interest of Australian jurists and of rallying their support for the Rule of Law.

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

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The last issue (Vol. VIII, No. 1) contained articles on the recent South West Africa judgment of the International Court of Justice, on State Succession and human rights and on the Indian Constitutional Court. It also had the full texts of the United Nations' Covenants on Civil and Political Rights and Economic and Social Rights, the Digest of Cases and Books of Interest.

Vol. VIII, No. 2, which is now available, is the first of two issues in honour of International Human Rights Year 1968. Its contributors are eminent lawyers from many parts of the world. In addition, it contains an article on a Constitutional Court (the *Conseil d'Etat* of France) and the Digest of Cases.

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