

FOR THE RULE  
OF LAW

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

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*No. 23*

AUGUST 1965

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## AFGHANISTAN'S PEACEFUL PASSAGE TO CONSTITUTIONAL MONARCHY

### **The Promulgation of the New Constitution**

Landlocked and isolated from the main streams of civilization for centuries, the rugged mountainous State of Afghanistan has recently attracted worldwide attention by reason of the sweeping constitutional reforms initiated by its forward looking monarch, King Mohammed Zahir Shah, and endorsed by the Loya Jirgah or the Great Assembly of the Nation.

The resignation in March 1964 of the Prime Minister, Prince Mohammed Daoud, uncle of the King and effective ruler of Afghanistan for 10 years, and the appointment of a commoner, Dr. Mohammed Yusuf, as his successor paved the way for the establishment of a workable democracy which the King felt was essential for the progress and development of his country. The King's own enthusiasm for the new Constitution is a clear indication that he is a progressive ruler, genuinely interested in becoming no more than a constitutional monarch at the head of a popular government.

The new Constitution was prepared by a drafting committee of seven members whose draft was then considered and modified by a 24-member advisory commission. The Loya Jirgah was then summoned to discuss the new Constitution and advise the King on its acceptability.

The Loya Jirgah summoned to consider the new draft constitution consisted of 450 members, 170 of whom were members of the National Assembly and another 170 of whom had been elected especially for this Jirgah, one from each Assembly constituency. Its composition also included the members of the Cabinet and the Senate, the 5 Justices of the Supreme Court of Afghanistan, and 30 persons, including 6 women, nominated by the King. It was not a body that had met at regular intervals, and was summoned only when the King judged it necessary to refer some important question of policy or some national problem to the representatives

of the people. It had last been summoned in 1955 when the Government sought popular support for its policy on Pakhtunistan.

Addressing this great assembly on September 9, 1964, the King explained that, while there had been no alternative to rule by an oligarchy in the difficult periods through which the country had passed, the time was now ripe for the institution of a constitutional monarchy excluding members of the royal family from directing the affairs of government, a function which had hitherto been its monopoly.

It would be incorrect to regard the Loya Jirgah as a mere instrument for stamping approval on the King's will. It was expected to discuss the 128 articles of the draft constitution one by one, and to vote on each article after discussion. Speeches from the floor were limited to five minutes each. There was a departure from custom in that this Loya Jirgah was held behind closed doors. The reason for excluding the public from discussions was that arguments against certain sections of the draft constitution—and many such were expected to be advanced in the course of the discussion—were likely to cause disturbance in the country if they were broadcast before final agreement on all the articles was reached. After ten days of debate, the Loya Jirgah on September 19, 1964, approved the draft constitution, subject only to certain minor amendments. On October 1 the King signed the new Constitution and promulgated it throughout the entire State. The Royal Promulgation of that day also declared the earlier Constitution of 1931 abrogated.

### **Its Objects and Principal Features**

The Preamble to the new Constitution recites that "the people of Afghanistan, conscious of the historical changes which have occurred in their life as a nation and as part of human society, while considering the under-mentioned values to be the right of all human societies, have, under the leadership of His Majesty Mohammed Zahir Shah, the King of Afghanistan and the leader of its national life, framed this Constitution for themselves and the generations to come". It states the objects of the Constitution as follows:

to reorganize the national life of Afghanistan according to the requirements of the time and on the basis of the realities of national history and culture;

to achieve justice and equality;  
to establish political, economic and social democracy;  
to organize the functions of the State and its branches to ensure liberty and welfare of the individual and maintenance of the general order;  
to achieve a balanced development of all phases of life in Afghanistan; and  
to form, ultimately, a prosperous and progressive society based on social co-operation and preservation of human dignity.

The Constitution consists of 11 Titles, that is to say, the State; the King; the Basic Rights and Duties of the People; the Shura (Parliament); the Loya Jirgah (Great Council); the Government; the Judiciary; the Administration; State of Emergency; Amendment of Constitution; Transitional Provisions.

Among its highlights is Article 24, which was introduced by the drafters with a view to ensuring that the former Prime Minister, Prince Mohammed Daoud, would not be in a position to return to power. The Article bars members of the Royal Family from participating in political parties and from holding any of the following offices:

1. Prime Minister or Minister
2. Member of the Shura (Parliament)
3. Justice of the Supreme Court.

The standing of members of the Royal Family is, however, guaranteed by another clause which provides that they shall maintain their status as members of the Royal House so long as they live. The Royal House is widely defined in the Article to consist of the sons, the daughters, the brothers and the sisters of the King and their husbands, wives, sons and daughters, and also the paternal uncles and sons of the paternal uncles of the King. The exclusion of members of the Royal Family from the political life of the country ushers in a new era in which professional men and intellectuals drawn from the middle class will guide the destinies of the country working within a democratic and constitutional framework.

Other noteworthy features of the new Constitution are the provisions for a Constitutional Monarchy; for an elected Lower House and partly elected Upper House; for a Government whose ministers will be outside Parliament but which can be defeated by parliamentary vote. In order to prevent ministers from acting capriciously, arbitrarily or without reference to the wishes of Parliament, the Constitution provides for the questioning of ministers in Parliament, for which purpose there is again provision

for their attendance in Parliament though without the right to vote. The new Constitution also contains entrenched clauses guaranteeing fundamental human rights, including, *inter alia*, the right to form political parties, the freedom of the Press and the independence of the Judiciary. These clauses will be referred to more fully when dealing with the provisions of Title 3.

### **The King, the State and Parliament**

Title 1, Article 1 declares Afghanistan to be a Constitutional Monarchy and an independent, unitary and indivisible State, sovereignty being vested in the people. Article 2 declares Islam to be the sacred religion of the country and prescribes that religious rites performed by the State should be in accordance with the provisions of the Hanafi Doctrine. It recognizes, however, the freedom of non-Muslim citizens to practise their own religions and perform their ceremonies within the limits determined by laws relating to public peace and public decency. It will thus be seen that while the Constitution respects the views of orthodox Afghans that the country should be an Islamic and not a secular State, it guarantees at the same time freedom of worship to its non-Muslim citizens. Article 3 names Pushtu and Dari from amongst the languages of Afghanistan to be the official languages of the country.

Reference has already been made to the position of the King and of members of the Royal Family *vis-à-vis* the Constitution. Article 7 describes the King as the protector of the basic principles of Islam, the guardian of the country's independence, the custodian of its Constitution and the centre of its national unity, and Article 9 goes on to define the King's rights and duties, some of the more important of which are the summoning of the Loya Jirgah (Great Council), the summoning and dissolving of the Shura (Parliament), the decreeing of new elections which shall be held within three months from the date of the dissolution of Parliament, the appointing of the Prime Minister, appointing of the Chief Justice and Judges of the Supreme Court and the proclaiming and ending of a state of emergency.

The Constitution provides that the Shura (Parliament) shall consist of the two Houses: Wolesi Jirgah (House of the People) and Meshrano Jirgah (House of the Elders). The members of Wolesi

Jirgah are to be elected by the people of Afghanistan " in a free, universal, secret and direct election in accordance with the provisions of the law ", each constituency or electoral district returning one member. The term of each Legislature is fixed at 4 years, for which period a member holds office.

In regard to Meshrano Jirgah, one-third of its members are to be appointed by the King for a period of five years from amongst well-informed and experienced persons and two-thirds of its members are to be elected, some by Provincial Councils and some by the residents of each province. One of the qualifications for parliamentary candidature is capacity to read and write. Members of Wolesi Jirgah must be at least 25 years of age at the time of the election and those of Meshrano Jirgah at least 30.

It must be pointed out that the parliamentary form of government was not a complete innovation in Afghanistan, as the earlier Constitution of 1931 also gave the country a parliamentary structure. However, while the rudimentary bi-cameral parliamentary system introduced by the Constitution of 1931 gave the Lower House or National Council a certain measure of control in theory, the real direction of the affairs of the country was in the hands of the King and the Prime Minister.

The Constitution also provides for the continuation of the Loya Jirgah (Great Council) which will consist of members of both Houses of Parliament and the Chairmen of the Provincial Councils. In the event of the dissolution of Parliament, its members retain their position as members of the Loya Jirgah until a new Parliament comes into being. The Loya Jirgah can be summoned by the King at any time by royal proclamation.

### **Fundamental Rights**

Perhaps the most interesting part of the Constitution is Title 3 (Articles 25 to 40) which contains important constitutional guarantees of fundamental rights and prescribes the duties corresponding to them. It declares that the people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law. The liberty and the dignity of the individual are inviolable and a duty therefore rests upon the State to respect and protect such liberty and dignity. No person can be punished except



by the order of a competent court rendered after an open trial held in the presence of the accused person. No one can be pursued or arrested except in accordance with the provisions of the law, nor can anyone be detained except on the order of a competent court legally made. Torture is prohibited "*even for the purpose of discovering facts*", and so is the imposing of punishments incompatible with human dignity. In regard to trials, the presumption of innocence is recognized.

Article 29 declares property to be inviolable and expropriation is permissible only in the public interest, and then only on payment in advance of equitable compensation. Article 30 guarantees the freedom and secrecy of communication, and Article 31 the freedom of thought and expression, including the freedom of the press. Article 32 gives Afghan citizens the right of assembly for legitimate and peaceful purposes. It also recognizes the right to form political parties, provided that the aims and activities of the party in question or the ideas on which its organization is based are not opposed to the values embodied in the Constitution. A party formed in accordance with the provisions of the law cannot be dissolved without due legal process and without an order of the Supreme Court.

The rest of the articles in Title 3 recognize several other fundamental rights which, though often less emphasized than the more classical ones, are nevertheless of vital importance in a democratic society. Examples are the right to compensation for damage suffered at the hands of the Administration, the right to work and the right to make a free choice of one's trade within the conditions determined by law. An important prohibition specifically imposed by the Constitution is the prohibition of forced labour. In regard to education, Article 34 declares that every Afghan has the right to an education which will be provided free by the State and the citizens of Afghanistan. The difficulty of providing free education for all at this stage is, however, recognized and, therefore, the Article goes on to say that the aim of the State in the sphere of education is to reach a point where suitable facilities for education will be available to all. Primary education is made *compulsory for all children* in areas where suitable facilities are provided by the State. The Government, however, declares itself obliged to prepare and implement a programme for balanced and universal education throughout the country.

Thus, the Constitution of 1964 represents an important advance

on the Constitution of 1931 in the field of fundamental rights and freedoms. The Constitution of 1931 did contain a limited Bill of Rights, but many of its articles were disregarded in practice. The brief survey of the articles relating to fundamental rights in the new Constitution should be sufficient to indicate not only the great importance which its framers attached to fundamental rights, but the closeness with which they have followed the articles of the Universal Declaration of Human Rights of 1948.

## **The Judiciary**

It is not possible for reasons of space to deal with the detailed provisions of the new Constitution relating to the Government and the Administration in this article. This article would, however, be incomplete without some reference to the position of the Judiciary in the new constitutional framework. Title 7 states that the Judiciary is an independent organ of the State and discharges its duties side by side with the Legislative and Executive organs.

The Judiciary consists of a Supreme Court and other courts, the number of which shall be determined by law. Judges are appointed by the King on the recommendation of the Chief Justice. Whenever a Judge commits an offence, the Supreme Court shall consider the case of the Judge in question, and after hearing his defence can recommend his dismissal to the King. In case the recommendation is approved by the King, the Judge shall be dismissed from office. Transfers, promotions and retirements of Judges are all within the competence of the Supreme Court.

Save in exceptional cases where a Court may decide to hold a closed trial, all trials must be held openly, the public having the right to attend. Judgments shall always be openly proclaimed, and the Courts are declared bound to state in their judgments the reasons for their verdicts.

A very far-reaching provision relating to the Judiciary is that no law can under any circumstances exclude a case or an area of the country from the jurisdiction of the Courts and assign it to any other authority. This provision does not, however, extend to the prevention of the establishment of Military Courts, but the jurisdiction of such Courts has been confined to offences relating to the armed forces.

## Conclusion

Ancient Afghanistan with its traditional ways of life has, thanks to its new dynamic Constitution, joined the ranks of 20th century constitutional democracies. The transition has been so smooth and peaceful that it has hardly attracted the attention of those beyond its frontiers. Some consider the new Constitution a remarkable and praiseworthy experiment, the success of which yet remains to be seen. The fact that the Loya Jirgah passed the Constitution without serious opposition must indicate that, even if it be considered an experiment, there is much hope for its success. But whatever be the measure of this success, there can be no doubt that the new era ushered in by the promulgation of the new Constitution is bound to bring about profound changes in nearly every facet of the nation's political and social life.

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## THE NEW EXPERIMENT IN CHILE

The Republic of Chile has already been the subject of a study in a recent issue of our Bulletin—No. 20, September 1964; this related to a new Press Act of February 22 1964. This Act gave rise to controversy, particularly—as was to be expected—in newspaper and publishing circles, but also in political circles since the Presidential elections were fast approaching and both the Christian Democratic Party and the Popular Action Front had raised objections to the Act in question—commonly referred to as the “Muzzle Act”.<sup>1</sup> They feared that it would prevent the publication of full and objective reports on the election.

It should be pointed out, however, that no difficulties relating to the freedom of the press were experienced in connection with the election in question, which took place in September 1964.

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<sup>1</sup> President Frei has pledged himself to the repeal of this Act, but has not yet been able to carry out this pledge.

Eduardo Frei, leader of the Christian Democratic Party was elected President of the Republic in that election, which aroused an unusual degree of interest in international political circles, and particularly in Latin America. The Christian Democratic candidate secured approximately 55.7 per cent of the votes cast, i.e. 1,418,101; the Popular Action Front candidate, Senator Salvador Allende, the closest contender, obtained 38 per cent, with 982,122 votes, while the third candidate, Senator Durán, got only 4.5 per cent of the votes cast.

In the closing stages of the electoral campaign, the issues had resolved themselves into a confrontation between two programmes of action which, while seeking to attain more or less the same objectives—i.e. to solve a serious economic crisis and promote the economic and social development of the country—differed as regards the methods to be employed.

The Socialist candidate favoured in all domains more drastic measures than those envisaged by the Christian Democratic candidate, who, nevertheless, put forward a well-integrated programme based on less radical methods.

One of the factors which aroused and merited special attention from world public opinion was the fact that for the first time in Latin America a Christian Democratic Party had succeeded to the Government of a country.

It would at present still be premature to reach any final opinion regarding what Christian Democracy, with President Frei as its leader, can achieve in Chile, not only because too little time has passed but also since it was only as recently as the General Elections of March 7 1965 that the Party obtained the Parliamentary majority necessary to secure approval of its main projects.<sup>1</sup> When President Frei acceded to power he was, in fact, faced with a hostile Parliament in which an Opposition majority was not disposed to help him with the projects he considered most urgent for the fulfillment of his programme. Thus, in January 1965 the new President found himself obliged to withdraw three Bills he had introduced in Parliament; the first related to the so-called "standardizing laws" which would have granted the President the powers necessary to

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<sup>1</sup> In the Lower House the Christian Democratic Party now has 82 seats and the P.R.A.P. 36 out of the total of 147 (the absolute majority being 74), and has 13 seats in the Senate, the P.R.A.P. having another 13.

revise the structure of, and reorganize, the public administration; the second related to "Popular Promotion" aimed at raising the living standards of the lowest classes and at financing development programmes. The third of these Bills is discussed below.

When the Christian Democratic Party secured the support of the people in the 1965 general elections President Frei gained a sufficiently large majority in Parliament to enable him, in principle, to carry out his programme without major difficulty from May 1965, when the new Parliament was convened. This programme, put forward during the election campaign under the slogan "Revolution with Liberty", aims—in the words of the President himself—at effecting the basic structural changes needed by the country for its social and economic development, under a system in which human rights are respected and the Rule of Law is observed. This declaration of democratic faith by the Head of a Latin American State cannot but be welcomed by the International Commission of Jurists which for years past has been fighting for these very principles, seeking to implant them in the conscience of the ruling classes, which in Latin America comprise many jurists and men of law; the declaration is even more welcome because it enables the dynamic aspect of the Rule of Law to reach its full value.

In general terms, the Christian Democratic Party advocates, as an international spokesman for the movement put it, "an action programme which takes as its starting point the existing realities. It is a gradual process, moving forward in successive stages. The current stage is devoted to improving the social, cultural and political conditions of the people. Industrial development, agrarian reform, mass education, providing an infrastructure for and developing semi-urban districts, effective self-determination for the country, etc.—these are the fundamental tasks which must be tackled first".<sup>1</sup>

These same ideas were expressed in different terms by President Frei himself when speaking to journalists after the elections, on September 5, 1964. "We have just seen democracy triumph. Nevertheless, those who imagine that liberty is the prerogative of the 'haves' are mistaken. Liberty is to have something to eat, to have a roof to sleep under, to educate yourself and to choose

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<sup>1</sup> Editorial from the monthly *DeCé*, No. 5, 1964, Santiago de Chile, the organ of Christian Democracy in Latin America.

the work you want to do. I do believe in individual initiative but this initiative must come from every human being and not be reserved to the possessors of capital ”.

At the practical level, President Frei's Government faces some key problems in present-day Chilean realities: agrarian reform and insufficient industrial development; the inadequate structure of undertakings, with the consequent need for reform; inadequate labour legislation, which has given him the idea of a new Labour Code.

As regards the first of these problems, President Frei's programme includes full details of his policy for the settlement of State lands; for adequate working of private holdings; for expropriation against compensation of insufficiently worked large holdings; for the development or creation of a class of small landholders, based on expropriation of *latifundia* (large estates) and supported to a large extent by a widespread co-operative organization; and, finally, for State aid to peasants, providing them with tools, machinery, seed and credits. To carry out his agricultural programme President Frei has the 1962 Agrarian Reform Act, but he is devoting special attention to the promulgation of a new Agrarian Reform Act suited to these intentions.

In the field of industrial development, President Frei's programme advocates an increase in the production of the copper and iron-ore mines, an extension of the processing industries, together with rational utilization of energy, an increase in exports of semi-finished or manufactured products, a credit policy aimed at promoting investment for productive purposes and limiting investment for consumption.

Because of its importance to the economy of the country, a key problem in Chile, the second largest producer of copper in the world, is the working of the rich deposits of that metal in the country. At present the exploitation of these deposits is mainly in the hands of three foreign companies. The seriousness of such a situation is evident, since copper accounts for about two-thirds of Chilean exports and yields about 70 per cent of State revenue. The problem of copper and the question of expropriation of the mines have figured for some time past in political and electoral programmes in Chile. President Frei does not propose nationalization of the mines but rather State participation in their ownership and management, to put the State in the position

of being able to exercise some supervision over exports of copper, and, in general, to secure more extensive participation of Chileans in the industry. During the election campaign President Frei declared that "nationalization of foreign companies is neither an ideal objective nor a doctrinal impossibility—it is an alternative which must be seriously weighed by the Chilean community in its development efforts".<sup>1</sup>

In pursuance of its policy, the present Government is negotiating agreements with the big companies regarding state participation in the mining, marketing and refining of copper, while at the same time promoting an increase in national production. The Government also hopes to secure Parliamentary approval for legal provisions in this respect.

Other problems engaging the attention of the Frei Government are: education, in connection with which it has decreed a crash programme aimed at ensuring that in 1965 every Chilean child shall have the opportunity of attending school; increasing wages and salaries in order to meet the cost of living, while at the same time curbing inflation; doing away with the so-called "gift dollars" which in the past frequently gave rise to large scale financial speculation, often to the detriment of the national economy; and, finally, the questions of financing low-cost housing and of fiscal reform.

The biggest achievement of President Frei's Government so far is in the educational field. One of his promises was to provide by a crash programme space for 200,000 more pupils in primary schools by March of this year. With the help of the army, students and local authorities the classrooms have been provided for this additional number and teachers have been found. Both secondary and university education are also being expanded.

The third of the Bills which, as was pointed out above, were blocked by the previous Parliament, relates to a reform of the Constitution, tabled on November 30, 1964. Its implications are

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<sup>1</sup> For the information of our readers we may mention Article 8 of the Conclusions of the Second Committee of our 1965 Bangkok Conference which reads: "Nationalization, decided upon by a democratically elected Government, of private undertakings which the Government considers it necessary to nationalize in the public interest is not incompatible with the Rule of Law, provided that it is effected in accordance with those principles, by means of procedures established by Parliament and against payment of a reasonable and equitable indemnity determined by an independent tribunal".

vast. This Bill is regarded by the Chilean Christian Democratic Party as one of the main instruments in fulfilling its programme. One of its outstanding features, for example, is that it gives the Executive the initiative in all legislation involving expenditure or which, in its application, impinges on socio-economic matters. The Bill grants legislative power to the President of the Republic in respect of certain matters; it also simplifies legislative procedure, gives the people an opportunity to express their opinion directly, by means of a referendum, on fundamental matters affecting them and in cases of divergence between the Executive and Congress; it emphasises the social function of the right of property by giving the Executive the necessary powers to carry out, by means of delegated legislation, the reforms needed to enable the majority of Chileans to accede to ownership of property. The Bill regulates and decentralises the Chilean public administration, and, finally, it embodies in the Constitution certain industrial rights of the workers, such as the right to form trade unions, to strike, etc.

From the international viewpoint, and more especially from the viewpoint of Latin-American unity, the proposed Constitutional reform contains a provision of the greatest importance, under which the State is empowered to participate in the setting up of supra-national bodies which would contribute to the effective integration of the Latin American hemisphere—the only way of achieving planned development of the Continent.

This last point is in line with President Frei's international policy in respect of Latin America. The Chilean Christian Democratic movement advocates Latin American unity and wishes to make it effective, seeking the most appropriate means of achieving this aim. Thus, the Chilean Ambassador to the Organization of American States declared that "for the Christian Democratic movement in Chile, the essential point is to establish the machinery which will promote Latin American integration. Economic integration has been brought to a standstill because the supra-national bodies needed to achieve it are lacking. The Latin American Free Trade Association, for instance, is a body which up to now has served to bring about tariff reductions, but it lacks an overall tariff policy with regard to the rest of the world, such as that applied by the European Common Market. Nor does the L.A.F.T.A. have any integrated industrialization policy for all its member States. Industrialization in Latin America is at present proceeding at the national level—there is no planning at the



regional level". Therefore, both President Frei and his foreign minister, Mr. Gabriel Valdés, have indicated that the policy of the Chilean Government is to seek to convert the O.A.S., if not into the mainspring of Latin American integration, then into a body capable of effectively contributing to the attainment of an objective which is absolutely necessary for Latin American development: economic integration and progressive political integration, conditioned by the state of the economy. This position is the background to what has been called Chile's eagerness to "latinize" the O.A.S.

These are the main facts characterizing the Frei Government since it came to power in September 1964. Obviously, the future development of the Chilean experiment calls for close attention in view of the important consequences of all kinds it may have on the future of the American hemisphere. The International Commission of Jurists expresses its satisfaction at the intention proclaimed by the Government of President Frei of carrying out all the changes needed for the development of the country, with full respect for human rights and the Rule of Law, and hopes to see—now that the political obstacles have been removed—the Government implement a programme which will adequately meet the aspirations of a people seeking to attain social justice in a framework of law.

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## LEGAL DEVELOPMENTS IN RUMANIA

In March 1965 the People's Republic of Rumania held general elections for its next Grand National Assembly before the expiration of the mandate of the current Assembly. *Scanteia*, the daily newspaper of the Rumanian Communist Party, published the list of the 465 elected—unopposed—deputies on March 10. The list showed that, as in the case of the previous election in 1964, about 38 per cent of the deputies were presented for re-election, including the top functionaries of the Communist Party and of the Government. A higher percentage of new deputies in some electoral districts with a national minority population in Transylvania is worth noting.

The new Grand National Assembly elected a new president for the State Council in the person of Mr. Chivu Stoica, one of the old-time leaders of the Rumanian Communist Party, to replace the deceased President Gheorge Gheorghiu Dej. It also proceeded to renew the mandate of the Constitutional Commission established in 1961 to elaborate a new Constitution.

*Agerpress*, the Rumanian news agency reported in October 1964 the commissioning of a draft Criminal Code and Criminal Procedure Code. According to recent reports, preparatory work on these drafts has reached the stage of discussion before the competent standing committee of the National Assembly, on completion of which the drafts will be submitted to the plenary session before the end of this year.

On April 21, 1965, the State Council adopted a Decree amending Law No. 5 of 1952 (previously amended on March 29, 1956) on the Organization of the Judiciary.

These new items may herald the start of important legal developments in Rumania involving a re-shaping of the legal system, a development which in other countries of Eastern Europe started after 1956. The Constitution, the organization of the Judiciary, and the criminal law and procedure—the area of reform contemplated—are important pillars of legality in every legal system.

An article published in 1964 in the legal periodical *Revue Roumaine des Sciences Sociales, Série de Sciences Juridiques*, edited by the Institute of State and Law of the Rumanian Academy of Sciences, threw some light on the views and methods currently evolving in Rumanian legal science.

Written by that journal's editor-in-chief Traian Ionasco, director of the Institute, and his deputy Eugen A. Barasch, and entitled "Constant Factors in Law—Law and Logic" (Vol. 8, No. 2, 1964), the article suggests the use of comparative legal science to provide scientific legal concepts to facilitate the work of the legislator. In this paper the authors develop a new marxist approach to the use of the comparative method in legal science by recognizing the existence of constant factors and concepts in law, common to all legal systems, whether of socialist, western or other origin. These common concepts derive from logic, i.e. the nature of human reasoning in the regulation of human relations and in rules governing human behaviour. After fixing their theoretical standpoint in marxist thinking by citing Engels to the effect that economic factors determine historical developments in the last resort, and by qualifying law as a superstructure of economic relations formed by a highly complex array of human factors among which economics, while decisive, is but one, the authors recall a pioneering article of Rumanian legal science published in 1956 in the first issue of the same Rumanian legal periodical by the present Prime Minister, Professor Ion Gh. Maurer. In this article Maurer admitted that legal systems have their own pattern of development, which he called evolution. In this evolution, legal concepts derived from human logic play a decisive part which could not and should not be left out of consideration. Proceeding from this tenet, and taking as their example basic concepts of the law of contract and of tort such as liability for wrongs committed (*responsabilité delictuelle et contractuelle*) or legal capacity (*capacité juridique*), the authors develop the considerations outlined above. In their reasoning they use the comparative method and quote freely from both Jhering, the outstanding German legal scholar of the 19th century and from contemporary Soviet authors; they use arguments from Rumanian and contemporary French legal science: the fundamental work of François Gény, works of the Mazeaud brothers and the Symposium published in honour of Jean Dabin in 1963. They arrive at the conclusion that at the later stage of social development it is necessary to give existing

social relationships the force of law by recognizing appropriate legal concepts in the framework of which these relationships are transformed from *de facto* to *de jure* ones having legal sanctions. The final aims and the theoretical context of legal institutions are developed by legal science—which is clearly distinguished by the authors from legal techniques. The final aims of a given legal system may be different from those of other legal systems, for they are determined by the theoretical basis of legal science, dependent on whether it is marxist or not. The theoretical, ideological basis determines the fundamental approach. Nevertheless, the authors insist, the legal techniques used to further development toward the final aim determined by legal science have very much in common in different legal systems, in spite of ideological differences, since they derive from constant factors, i.e. from the laws of human logic applied to the development of human relations in changing historical circumstances.

This article undoubtedly constitutes a new approach to a fundamental problem in Eastern European countries: the modernization of their legal systems in order to deal with the circumstances and needs of the second half of our century. It marks a step forward from the stand adopted by marxist legal scholars at the Colloquium on Socialist Legality held in Warsaw in 1958. At this Colloquium differences rather than similarities between socialist and “bourgeois” legal systems were stressed; such common features as existed in legal techniques were either denied or played down. The article also shows a growing awareness among highly placed Rumanian legal scholars of the need to build up a legal system in which *de facto* social situations created and maintained by the complex working of political power factors may be converted into a legal system, in which legality and the authority of law should play a growing role and have a stabilizing effect. In such a newly developed legal system legal techniques may be adopted from anywhere, provided of course they serve the aims of the State as interpreted by the Party.

Accordingly, the recognition of constant features in legal techniques by Rumanian jurisprudence may certainly make it easier for Rumanian lawyers to speak, unchanged ideological differences notwithstanding, a common professional language with lawyers devoted to the promotion of the Rule of Law.

In a way, certainly starting from very different premises, the

authors of the article in question seem to recognize now, in part at least, the definition of the Rule of Law as formulated in 1959 at the New Delhi Congress of the International Commission of Jurists:

The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic background, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.

The new approach in Rumanian legal science to legal techniques has found recent expression in the new Constitution.

On June 24, 1965, it was announced that the Constitutional Commission of the Grand National Assembly, sitting under the chairmanship of Mr. Ceausescu, Secretary-General of the Rumanian Communist Party, had unanimously adopted the Draft Constitution, the text of which was published shortly afterwards. According to its provisions the Rumanian People's Republic will become the Socialist Republic of Rumania. After Czechoslovakia and Yugoslavia, Rumania is the third country in Eastern Europe to announce officially that it has reached the stage of socialism on the path of "transition to communism".

The Constitution was adopted by the Grand National Assembly, on the occasion of the Rumanian National Day, on August 21, 1965. The following short account of the major provisions of the Constitution is intended to give a preliminary analysis of its basic trends.

The Constitution underlines and consolidates the newly asserted independent policy of Rumania. This is expressed in the new name of the country stressing it as a noun: Socialist Republic of Rumania. A new anthem and the omission of all mention of the Soviet Union from its text serve the same purpose. Article 14 defines Rumania's place in the world: "Based on the principles of observance of sovereignty and national independence, equal rights and mutual advantage, non-interference in internal affairs" Rumania maintains and develops "relations of friendship and fraternal collaboration with the socialist countries, promotes relations of collaboration with countries having other socio-

political systems and takes an active part in international organizations with a view to ensuring peace and understanding among the peoples.”

Chapter I makes it clear that there will not be any change in the power structure of the country or its political or economic system.

Articles 3 and 26 express more explicitly than was the case before that “in the Socialist Republic of Rumania the leading political force of the whole society is the Rumanian Communist Party”, which “expresses and loyally serves the aspirations and vital interests of the people, implements the role of leader in all the fields of socialist construction, and directs the activity of the mass and public organizations and of the state bodies.”

The system of the unicameral Grand National Assembly, which elects all the other state organs such as the State Council, the Council of Ministers, etc., is also maintained.

The national economy of Rumania is a socialist economy, as stated in Article 5, based on the socialist ownership of the means of production. At the same time, to a limited extent, the right to own land is assured for those peasants who “cannot associate themselves in agricultural production co-operatives” (Art. 11). Craftsmen are also guaranteed ownership of their workshop (Art. 11). The right of personal property, i.e. income and savings derived from work, the dwelling house and the land on which it stands, goods of personal use and comfort, is guaranteed for every citizen (Art. 36).

Immediately after the basic provisions of Chapter I, a catalogue of fundamental rights and duties of the citizens is contained in Chapter II. This catalogue follows broadly that of the Universal Declaration of Human Rights.

Article 17, the first in this catalogue, guarantees equal rights to every citizen irrespective of nationality, race, sex or religion in all fields of economic, social and cultural life. The 1952 Constitution (Art. 81) granted this right only to the “working people” of the country.

Article 31 guarantees inviolability of the person, proclaiming that no person can be detained or arrested without well grounded proofs or indications of a punishable act defined and sanctioned

by the law. The investigating authority can order detention of a person only for a maximum of 24 hours and no one can be arrested except on warrant issued by a court or the Procurator.

The right of defence is assured throughout the trial (even if not in pre-trial investigation) (Art. 105).

The catalogue of rights is implemented by constitutional safeguards: the right of petition (Art. 24), recourse to the courts, which "by their judicial activity have to defend the socialist system and the rights of persons" (Art. 95). In the cases provided for by the law the courts also exercise control over the decisions of administrative or public bodies having jurisdictional functions (Art. 96). The Constitution does not go as far as the Yugoslav Constitution of 1963 in establishing a Constitutional Court. Instead of that, it provides for a Constitutional Commission of the Grand National Assembly (Art. 53) consisting of deputies and other experts, such as members of the Supreme Court, teachers of higher education and scientific researchers, to exercise control over the constitutionality of laws and to report to the Grand National Assembly. The watchdog of legality remains, as in the previous Constitution which adopted the Soviet model, the Procurator General.

This short outline also shows a considerable shift from the former concept of the State and its activities embodied in the previous Constitution. Article 13, besides listing the classical tasks of the defence of the country and the organization of its external relations, emphasizes welfare matters and the observance of legality. By this Article, in order to develop the socialist system, to raise the people's living standard and cultural level, to ensure the freedom and dignity of man as well as his opportunity for the fullest degree of self-expression, the Socialist Republic of Rumania pledges itself to organize, plan and conduct the national economy, defend socialist property, develop education, ensure the conditions for the development of science, the arts and culture, maintain public health services, to guarantee the full exercise of the citizen's rights, to uphold socialist legality and defend the legal order.

The new Constitution is a remarkable step forward in the constitutional development of Rumania, eliminating many restrictions on rights and filling gaps in the legal safeguards of the 1952 Constitution, the main object of which was the class struggle and repression of the "enemies of the people". It remains to be seen how far the new approach to legal techniques will prevail in the Grand

National Assembly, faced with the serious task of reshaping the country's legal and police system, built upon the pattern of the 1952 Constitution.

If the provisions of the new Constitution are fully implemented at all levels of public life, it could herald the beginning of a new era in the nation's life and open the door for interesting legal developments which merit careful consideration.

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## DISCUSSION ON A NEW SOVIET CONSTITUTION

The draft of the new Soviet Constitution has been in preparation since 1961, when the 22nd Congress of the Communist Party of the Soviet Union (CPSU) announced that, in view of the structural changes in Soviet society, a new stage in its history had been reached, and decided that in the course of this new period "the dictatorship of the proletariat" should lose its exclusive class character and become "the state of the entire people". Since the Party Congress, Soviet jurists have been devoting considerable efforts to the elaboration of the concepts of this new constitutional development. The leading Soviet legal periodical, *Sovetskoe Gosudarstvo i Pravo* (Soviet State and Law), carried contributions to the theoretical discussions on this topic in a special section. The then editor-in-chief of the journal, A. L. Lepeshkin devoted a long article to summing up results and to pointing to remaining deficiencies in the preparatory work of Soviet constitutional lawyers concerned with the draft constitution (No. 2, February 1965). The *Bulletin* of the International Commission of Jurists has commented from time to time on constitutional developments in Eastern Europe and in Communist China (e.g. No. 20, September 1964). This time attention is drawn to certain problems that have arisen in the course of current discussion on the Soviet draft constitution which are dealt with in the article by Lepeshkin.

Lepeshkin starts by emphasizing the growing role and increasing tasks of Soviet legal science as expressed in the CPSU Central Committee resolution of August 4, 1964 and by the Central Com-



mittee Plenum of November 1964, and calls for the implementation of Party directives by a "steady rise in the quality and ideological level of scientific research". He then deals with specific problems facing Soviet legal science, two of which seem to be outstanding: one is the need to clarify the limits of sovereignty of the Union Republics of the USSR, the other is the revision of the Soviet electoral system.

1. A smoothly working federal system is a vital necessity in a multi-national state like the Soviet Union, where of 220 million Soviet citizens about 100 million are non-Russians. The Soviet system of federation, which purported to weld the great number of European and Asian nations and tribes that formed the Tsarist empire into a federation of equals united in the common ideology of communism, took shape in the first federal constitution of 1924, which was replaced in 1936 by the present constitution proclaimed by Stalin and still in force. This system is basically different from that which in western countries is understood under federalism, since it prescribes no field of regulation as belonging exclusively to them and omits any supervision of the constitutionality of decisions taken by the Union or by the Union Republics by a Supreme Court. While it contains a degree of autonomy, the Soviet system presupposes a highly centralized administration from Moscow. The federated units are tied to the sources of power through both the leadership of the Communist Party and control of the federal agencies.

The first serious Soviet criticism of the present system of federation of the Union Republics is contained in the article in question. Stressing the achievements and the viability of the Soviet system of federation, the author asks for considerable improvement.

The provisions of the present USSR Constitution dealing with the powers of the Union and the constituent Union Republics are far from perfect. They contain no indication of either principles or any other starting points for determining which questions should fall within the competence of the Union and which should be included in the powers of the Union Republics.

To remedy this situation it is suggested that full use should be made of the experience of the 15 Union Republics, 20 autonomous republics, 9 autonomous provinces and 10 national regions, which together constitute the present federal system of the Soviet Union. On the basis of this experience new principles should be deve-

loped to serve as a basis for a correct delimitation of jurisdictional powers between the Union and its federated units. The principle of "democratic centralism", as the present highly centralized administrative pattern is euphemistically called, the author admits, does not guarantee appropriate solutions. Indeed Lepeshkin speaks of a serious gap in Soviet constitutional theory. It might be mentioned in addition, that a doctrine on the sovereignty of the Union Republics is as non-existent in practice as it is in theory, in spite of the fact that it is proclaimed by Article 15 of the 1936 Constitution, albeit in vague general terms. The elaboration of a theory of the sovereignty of the Union Republics—Lepeshkin insists—is a major task for Soviet constitutional lawyers whereby they could help the drafters in the Constitutional Commission to provide the necessary constitutional safeguards to be included in the Constitution.

Constitutional problems involved in the sovereignty of the federal states emanate basically from the right of self-determination of the peoples, a right which, despite lip service paid to it, remained very much on paper in the Soviet Union. Problems relating to the right of self-determination were recently put on the agenda of various international organizations, including the United Nations, by Afro-Asian nations. The UN Seminar on Human Rights held in June, 1965 in Yugoslavia, dealt with problems of a multinational society and offered an occasion for Soviet lawyers to confront their views and concepts with those of their colleagues from all parts of the world, and to make comparisons with the experience of other federal states. It will be interesting to follow how far world-wide experience of these problems will enrich the current debate on the sovereignty of the Soviet Union Republics and to see the new solutions that are expected to emerge from the preparatory work of the Constitutional Commission. Such solutions may go beyond the right of the Ukrainian or the Byelorussian SSR to have a delegate sitting beside the Soviet delegate at sessions of the United Nations and voting with the latter.

2. The second problem of outstanding interest raised by Lepeshkin is that of the revision of the Soviet electoral system. The subject was also included in the 1961 Programme of the CPSU. Present electoral practices, suggests the author, should be improved to enable voters to exercise their will more genuinely and more fully. Soviet legislation does not expressly limit the number of candidates, nevertheless electoral practice has evolved in such a way that the

ballot paper for deputies lists only *one* candidate for whom electors of the given constituency may vote, which makes of such a vote a mere formality. On this problem the author remarks: "The democratic nature of an electoral system is not measured solely by how many candidates are listed on the ballot, one or two; nevertheless, this problem is not a secondary one and in our conditions its correct solution has great importance". The idea is to allow more than one candidate to figure on the ballot list, a proposal which, it may be added, would not in itself transform Soviet elections into representative ones, but could open the way, as Lepeshkin has rightly put it, "for the development of the democratic principles of the Soviet electoral system".

It is worth noting that the idea of extending the voter's choice to more than one handpicked candidate had been tentatively launched by Stalin already in 1937 in the preparatory stage of the first elections under the then new 1936 Constitution. In order to give it full political meaning, it would of course require not only a multiplicity of candidates proposed by organizations under the control of the Communist Party (Article 141 of the present Soviet Constitution), but also a multiplicity of independent civic groups from which such candidates could be drawn.

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## SPAIN SINCE OUR LAST REPORT

It will be remembered that in 1962 the International Commission of Jurists published a Report<sup>1</sup> which described with objective precision the structure of the Spanish State; a structure—as the Report showed—which was far from meeting the canons generally accepted in a modern democracy.

The Spanish Government did not respond until the middle of 1964 when it drew up a reply in the form of a book<sup>2</sup> “whose prime purpose”, as the preface put it, “is not to defend the present legal system in Spain, but rather to re-establish the truth concerning the legitimacy of origin of the Regime and its right to exercise power”.

The Spanish Government's reply, which was prepared by a group of jurists appointed by the Madrid Institute of Political Studies at the request of the Ministry of Justice, is mainly concerned with the justification of the actions of the Spanish authorities. The publication in 1964, of this reply to the Commission's report of 1962 is welcomed; it shows a realization that the state of affairs of which complaint was made by the Commission required justification two years later.

The object of the present article is to review briefly developments related to the application of the Rule of Law since the Commission's 1962 Report.<sup>3</sup> This is to enable an assessment to be made of the extent to which the anxieties expressed by the Commission in 1962 are still valid. That there have been tendencies within the Government towards some degree of liberalization is clear, but the assertion of these tendencies has been agonizingly slow and halting. The undoubted economic expansion and the influx of tourists from abroad are among the factors that should have favoured a much greater degree of liberalization.

<sup>1</sup> Spain and the Rule of Law, Geneva, 1962, 155 pages.

<sup>2</sup> “España, Estado de Derecho—Réplica al Informe de la Comisión Internacional de Juristas” (Spain, A State of Law—Reply to the Report of the International Commission of Jurists), Madrid, 1964, 200 pages, Servicio Informativo Español. Also published in French.

<sup>3</sup> Bulletins 7 (October 1957), 8 (December 1958) and 9 (August 1959) contained studies on Spain prior to the Report.

In order to assess the steps taken towards liberalization it is necessary to recall briefly the main political events since 1962 in which the application of the Rule of Law was involved. These were:

1. *Freedom of the Press.* The 1938 Press Law is still in force. While some of the press censorship procedures have been modified, effective press censorship still operates. A leading reputable newspaper such as *Le Monde* is banned from circulation; other leading responsible newspapers such as *The New York Times* and *The Guardian* suddenly become unobtainable at news stands if they carry any reports which displease the authorities. The credentials of the Madrid correspondent of *Le Monde*, M. José A. Novais, were withdrawn by the Spanish authorities earlier this year. The introduction of a much-heralded new Press Law has not yet materialised.
2. *Freedom of Association.* There has been no improvement in the right to form political or trade union organizations.
3. *Political Trials.* Julian Grimau, member of the Central Committee of the outlawed Spanish Communist Party, was executed on April 20, 1963, after having been condemned and sentenced to death by a military tribunal in Madrid on April 18, on charges of having tortured and assassinated prisoners who were opposed to the Republic when he was chief of police in Barcelona during the Spanish civil war, and of having committed the "continuous offence of military rebellion" from 1936 until his arrest in November 1962. The death sentence passed on Grimau and his execution 26 years after commission of the offences provoked a world-wide reaction of protest on humanitarian and legal grounds. The Grimau trial was the last of a series of cases that had begun on February 20, 1963. During this period over 100 persons were sentenced to prison terms ranging from a month to 18 years for acts described as military rebellion, including support of the 1962 strikes—strikes are illegal under Spanish legislation. The defendants in these trials came from different walks of life—professional persons, students, craftsmen, workers, etc., and were also of most varied political tendencies. (The establishment of a new Tribunal of Public Order in 1963 is dealt with later.)
4. *Restriction on the Right of Residence.* A device resorted to by the Spanish authorities is to arbitrarily impose limitations on the right of residence of persons against whom it cannot apparently profer any valid legal charge.

The most glaring and ill-advised exercise of this penal arbitrary power was used in connection with a number of well-known personalities who were participants in the Congress of the European Movement in Munich in 1962. This was dealt with in the Commission's 1962 Report.

These powers were also used in connection with some 140 Asturian miners who were transported to other parts of the country in the middle of 1962.

5. *The Protest by Intellectual Circles.* A large number of distinguished intellectuals, including politicians from the various opposition groups in Spain, teachers from the leading universities, writers and so on, issued a manifesto on May 8, 1962 calling for the "establishment of a system of negotiations to meet the claims for improvement in working conditions through methods generally practised in the world" and advocating "true freedom of information". It regretted the fact that the widespread strike movement which during the summer of that year had swept mainly across the Basque, Catalanian and Asturian provinces had been practically ignored by the Spanish press and radio, as a result of which Spaniards had to rely on foreign sources of information. The signatories further objected that the details on this question given by official news media presented the strikes as being merely the outcome of foreign interference. Among the signatories were Dr. Ramón Menéndez Pidal (president of the Royal Academy of the Language), Pedro Laín Entralgo (former rector of Madrid University) Ramón Pérez de Ayala, José María Gil Robles and Dionisio Ridruejo.

One year later, in September 1963, on similar grounds 102 Spanish intellectuals addressed a Letter to the Minister of Information and Tourism protesting against the excessive cruelty inflicted mainly in Asturias on a number of miners and their relatives and friends as a result of the strikes of the summer of 1963. The signatories included such personalities as Valentín Andrés Alvarez, José Luis López Aranguren, Vicente Alexandre, Enrique Tierno Galván and José Bergamín. The Minister's reply to this Letter of the intellectuals sparked off a heated debate which led to a second letter, dated October 31, 1963, which "regretted the lack of public information". This matter was closely connected with the controversial problem of government control of information media, and linked with the

question of the freedom of the press. This second letter contained 188 signatures, including Santiago Montero Díaz, Luiz and Juan A. Goytisolo, Antonio Maria Badia Margarit and Emilio Grivalt.

6. *The Conflict with the Universities.* Events which occurred in the universities during the first quarter of 1965 attracted wide-spread attention. The demands put forward by students and teachers for a more liberal and democratic structure of the student associations, and in particular the reorganization of the Spanish University Union (a vertical syndical organization under the direct control of the State), provoked rising tension in the first few months of 1965 in university circles; this gave rise to many demonstrations and concrete claims were formulated. In view of the nation-wide scope of the movement, the authorities were compelled to consider a new structure for the one and only students' union.<sup>1</sup>

7. *Severity of Sentences.* While, since August 1963, there have been no executions, the sentences demanded in political cases often appear excessive by normal standards.

8. *Amnesties.* Full credit must be given for several amnesties which have been granted, including the most recent one in July 1965. It must, however, be pointed out that these amnesties encompass results somewhat different from what is usually understood by the term "amnesty". The amnesties granted in Spain are in fact a graduated blanket reduction of all sentences. But the ratio of reduction is heavily loaded in favour of short term sentences. They therefore benefit principally ordinary criminals serving short term sentences rather than political prisoners serving long term sentences. They do, however, to some extent mitigate the severity of the sentences already mentioned.

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<sup>1</sup> The Spanish Official Gazette of August 21, 1965, published a decree of expulsion for life from the University of Salamanca of Professor Enrique Tierno Galvan and from the University of Madrid of Professors J. L. Lopez Aranguren and A. Garcia Calvo. Professors S. Montero Diaz and M. Aguilar Navarro of the University of Madrid were suspended for two years. These five distinguished intellectuals were thus punished for identifying themselves earlier this year with the movement for the reform of the University structure. The sanctions imposed on them cast another shadow of doubt on the Government's attitude toward liberalization.

However brief the foregoing review of events since the publication of the 1962 Report, it does not disclose any really substantial liberalisation results. It is readily acknowledged that the more realist ministers in the Spanish Government must be disappointed with the results so far achieved in this direction. Indeed, the "declarations of intention" which are made from time to time announcing proposals to be made to liberalize existing laws, are in themselves a clear indication of conflicting tendencies within the Spanish administration. In the subsequent portion of this article the new laws and proposed draft laws are reviewed so that a proper evaluation may be made between promise and realization.

### **Creation of the Tribunal of Public Order**

The establishment of a new Tribunal of Public Order to judge civilians accused of certain activities against the security of the State was approved by the Spanish cabinet on May 3, 1963; the law was approved by the *Cortes* on November 28, and published in the Official State Bulletin on December 2, 1963. The jurisdiction of the new tribunal, whose seat is in Madrid, extends over the entire national territory.

It was established in order to transfer to the jurisdiction of the new tribunal those offences which previously came under military jurisdiction; it would also try cases connected with strikes, illegal propaganda and political meetings—illegal under the present Spanish structure.

The military tribunals still try acts of terrorism, but now defendants may be represented by civilian lawyers. The law establishing the Tribunal of Public Order abolished the special Tribunal for the repression of freemasonry and communism which had been set up under military jurisdiction in May 1940 and which had retroactively condemned a number of former freemasons to imprisonment.

The establishment of the Tribunal of Public Order is an improvement over the former system of emergency military tribunals, but the existence of such special tribunals is undesirable. According to official information, 128 sentences had been imposed by the Tribunal of Public Order by the end of February 1965.



## Law of Associations Number 191, December 24, 1964

Despite the declaration in the preamble of this law that “the right of association is one of the natural rights of man which a law cannot impair and which it is obliged to protect”, this right to freedom of association is not recognized except for those ends which the State considers lawful and deems compatible with the principles of the “National Movement”.

What are unlawful ends under this law? Those which are contrary to the fundamental principles of the “National Movement” and other fundamental laws<sup>1</sup>, those which are proscribed by the penal laws, those which are an offence against morality and public order, and any others which may jeopardize Spain’s political and social unity.

In a rider to Law 191, in addition to many other restrictions on the right of association in the law itself, it is laid down that “the provisions of this law do not apply to trade union organizations or to entities and groups coming under such trade union organizations”. It is clearly a law permitting only associations which follow the line of the present regime; it is a law which seeks to perpetuate a monolithic structure called the “National Movement”—whatever that may mean.

Because of the moral weight of his words, it is appropriate to quote from Pope John XXIII’s encyclical *Pacem in Terris*, where he justifies the true and full exercise of the freedom of association:

From the fact that human beings are by nature social, there arises the right of assembly and association. They have also the right to give those societies of which they are members the form they consider most suitable for the aim they have in view, and to act within such societies on their own initiative and on their own responsibility in order to achieve their desired objectives.

We ourselves stated in the Encyclical *Mater et Magistra* that, for the achievement of ends which individual human beings cannot attain except by association, it is necessary and indispensable to set up a great variety of such intermediate groups and societies in order to guarantee for the human person a sufficient sphere of freedom and responsibility.<sup>1</sup>

### Announcement of a New Press Law

In a statement made on July 30, 1962, the Minister of Information and Tourism, Mr. Fraga Iribarne, declared his intention of

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<sup>1</sup> See appendices 3 and 6 of our Report Spain and the Rule of Law, Geneva, 1962.

submitting a draft press law in December of that year to replace the 1938 law.

The National Press Council was established in December 1962; its 60 members are appointed by the Journalists' Union. The Minister of Information stated at the inaugural meeting that one of its tasks would be the study of the bill that was being drawn up. The enactment of this bill—which still contains many restrictions—would represent a marked improvement on the existing legislation.

Three years later, however, the 1938 Press Law is still in force and the draft press law remains only a draft.<sup>2</sup> Approval of this bill by the Cortes would entail a review of the obstacles and directives which have been hampering the Spanish press for the past 27 years.

This bill, which unfortunately has not been approved, "would be aimed at the removal of government censorship by granting greater freedom of expression to the various information media and would entail changes in the regulations covering the creation of new publications and the choice of directors. Nonetheless, certain *guarantees* concerning the orientation of the press would be maintained".<sup>3</sup>

It must be noted that since 1962 some censorship procedures have been relaxed through the approval of a series of related provisions, such as the Advertising Regulations.

#### **Draft Regulations concerning Associations of Heads of Family— Official State Bulletin, December 3, 1964**

The present Spanish State is defined as an *organic democracy*. Within this concept there are said to be three "natural units of Spanish life: the family, the local community and the union; these are the fundamental structures of the national community". With such a basis and in furtherance of point 6 of the "Principles of the National Movement" (Fundamental Law of May 17, 1958), a law regulating each of these units is required. The draft referred to above is designed to regulate the "Associations of Heads of Family" which were created to give effect to the concept of public representation of the family; and thus to give legal status to the political

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<sup>1</sup> Encyclical *Pacem in Terris*, 1963.

<sup>2</sup> It was announced on August 13, 1965 that the promised draft press law had been approved by the Cabinet and would be transmitted to the *Cortes*, which is due to meet in October, for its consideration.

<sup>3</sup> IPI, monthly Bulletin of the International Press Institute, June 1964, page 1.

rights of the family, as part of the fundamental social structure, by grouping the heads of families into associations which will be under the control of the "National Movement".

*Ecclesia*, the Spanish organ of Catholic Action, reflecting the position of its administration, nevertheless attacked the law at its very roots. The paper writes that "its approval would of course mean that the State and the Movement would control exclusively the representation of the interests of the family"; it challenges the political concept of the regime, that the head of the family should be entrusted with the political representation of the entire family. "It is undeniable that he cannot assume simultaneously the political representation of all members of the family and of each one in particular. The regime cannot impose a political orientation, state monopoly or certain restrictions on the associations. If family representation were subordinated to the State, the State would be doing no more than holding a conversation with itself."

### **Draft Amendments to Strike Legislation**

According to information from Madrid and from news items, the Council of Ministers amended Article 222 of the Penal Code on May 12, 1965, so that this article, covering punishment for all strikes, would now exclude those resulting strictly from labour disputes. Non-political strikes would therefore be authorized, except for government employees. The question remains as to what criteria will be used to determine whether a strike is political or arises from normal employer-worker relations.

The Spanish Minister of Labour, Jesús Romero Gorría, stated in June of this year at the International Labour Conference in Geneva that the Spanish Government was drawing up new legislation to authorize strikes. Without going into detail, he said that his Government had recently tabled a draft bill in the *Cortes* designed to change the legislation which bans all strikes. He added that economic and strictly labour strikes would no longer be considered penal offences, thus acknowledging what the force of circumstances had made a common occurrence.<sup>1</sup>

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<sup>1</sup> The steadily increasing outbreak of strikes and work stoppages throughout Spain, but especially in the north-west, and their repercussions have forced the Spanish Government to give serious consideration to this problem. The big strikes in Asturias in the summers of 1962 and 1963, the 1964 strikes, the Valencia strikes in June 1965, besides all the recent labour and social troubles, must be borne in mind.

## The Status of Protestants

The draft bill on the Status of Protestants, which would grant certain rights to about 30,000 Protestants in Spain and which the Minister of Foreign Affairs, Mr. Fernando Ma. Castiella y Maix, has been trying to have adopted for some considerable time, has been "pigeon-holed" in the *Cortes* since autumn 1964.

An agreement in principle on this matter was reached between the Vatican, the Government and the Spanish Catholic hierarchy, but it is said that behind-the-scenes manoeuvres have blocked its promulgation. The law on the status of Protestants would give legal recognition to non-Catholic Christian faiths, and would also recognize their right to own property, have their own schools and publish books, but they would not be allowed to proselytise. This law would also legalize marriages between Catholics and non-Catholics.

This draft bill stirred up a good deal of opposition in the more conservative church circles; voices, like that of the Bishop of Las Palmas, in 1964, were raised in bitter attacks on a law that would relax present restrictions on Protestants and which would improve the position of those who suffer because "the Catholicity of the Spanish State and the position which it bestows upon the Church inevitably weaken the constitutional guarantee of religious freedom."<sup>1</sup>

## Decrees on Students' Union

On April 2, 1965, the Cabinet approved the decree reorganizing the official students' union (the Spanish University Union). Two months later, on June 5, 1965, the regulations implementing this decree were published. The new official Union remains the only students' union and membership continues to be compulsory. The Spanish University Union is the summit of a vertical organization consisting of two types of students' associations: national

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<sup>1</sup> Report of the International Commission of Jurists on Spain and the Rule of Law, Geneva, 1962, page 54.

Article 6 of the Charter of the Spanish people, guaranteeing religious freedom, reads:

"The profession and practice of the Catholic religion, which is that of the Spanish State, will enjoy official protection.

"Nobody will be molested because of his religious beliefs or the private exercise of his creed. No external ceremonies or manifestations will be permitted except those of the Catholic religion."

associations, each covering a single field of study, and university associations representing each faculty within the university.

The important innovation introduced by the new law is that all the leaders of the union, including the President of the National Congress, will be democratically elected instead of, as formerly, being nominated by the Government. At the same time, the decree reduces the number of student representatives and introduces more stringent qualifications for such representatives.

These elected leaders will represent the students on the various academic bodies and in the organs of the National Movement, as did their nominated predecessors. However, control is not abandoned altogether, for the decree states that the Union must function according to the fundamental principles of Spain's political and social life, and also provides for the appointment by the Government of a commissioner responsible for the supervision of administrative matters, and who is to act as a link between the students' associations and the institutions of the State and the Movement.

As a final concession, the decree grants students the right to organize and present individual and written petitions in relation to purely academic questions.

It is too early to comment upon the effect of these new provisions, and much will depend upon the spirit in which the new system is administered and the degree of actual independence and authority that is in practice granted to the new student leaders. The first reaction of the present student leaders has been one of disappointment that the liberalisation did not go further, and that a tight control is maintained on the qualifications and numbers of student representatives. However, it is an important step forward.

The above review of the actual legislation adopted and of the various draft enactments which have been announced shows disappointing results both as to the extent and nature of the measures adopted and as to the failure to enact the liberalising measures foreshadowed.

One cannot help regretting that the Spanish regime does not seem to realize the harm done by its failure to face the need for serious reforms in the fields surveyed in this article. The provisions of the Universal Declaration of Human Rights, the European Convention of Human Rights and the jurisprudence established within the framework of the Council of Europe provide clear signposts as to the reforms that should be boldly undertaken.

## TANZANIA: A ONE-PARTY STATE

In January 1963, the National Executive Committee of the Tanganyika African National Union (T.A.N.U.) resolved that Tanganyika should become a one-party state, and a year later the President of the Republic set up a Commission to recommend the form in which that resolution should be implemented. The decision to establish a one-party state was inspired, in part at least, by the fact that Tanganyika was *de facto* a one-party state already, with T.A.N.U. candidates at both national and local elections being returned either unopposed or with overwhelming majorities, and with the prospect of contested elections steadily receding.

The operation of a one party system in a constitutional context intended for two or more parties led to two weaknesses in particular which the Commission was designed to consider means of eliminating. The first was that at elections the voter, being confronted in most cases with a single, unopposed candidate, was offered no real opportunity to take part in choosing his representative in the legislature. Secondly, the centre of debate and constructive criticism had passed from the National Assembly to the National Executive Committee of the Party (N.E.C.). "With a few notable exceptions debates in the National Assembly have tended to be lifeless and superficial. Legislation of the most complex and far-reaching kind has passed rapidly through all its stages without challenge to basic principles or careful examination of detailed provisions. In the N.E.C., on the other hand, every aspect of Government policy has been the subject of rigorous scrutiny and the exchange of views has been frank, fearless and on the basis of complete equality." <sup>1</sup>

The task of the Commission, then, was "to adjust the institutions of the one-party system in government, to permit wider democratic participation and fuller discussion of national issues" <sup>2</sup>,

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<sup>1</sup> One-Party State Commission Report, p. 20.

<sup>2</sup> Report, p. 14.

and "to devise new constitutional forms which will enable the ordinary man to participate more fully in the process of government".<sup>1</sup>

The Report of the Commission was published on April 7, 1965, and its recommendations, subject to a number of minor modifications made by the N.E.C., were presented to, and unanimously adopted by, the National Assembly in the form of a White Paper setting out the proposed constitutional amendments designed to give effect to them. The new Constitution was passed by the National Assembly on July 5, 1965, and will be followed in October 1965 by Parliamentary and Presidential elections under the new system.

### **The Background to the Report**

Before discussing the recommendations of the Commission, it is desirable to set out briefly the political background against which they must be considered. While it is undeniably true that T.A.N.U. had demonstrably had the support of the large majority of the population, it is at least open to question whether organized opposition had ceased as a result purely of lack of support. It was shortly after the announcement, in January 1963, that the N.E.C. of T.A.N.U. had approved a resolution that Tanganyika should become a one-party state that the sole surviving opposition party, *itself an amalgamation of the African National Congress and the People's Democratic Party*, was dissolved, having previously been subjected to restrictions, and its leader, Christopher Tumbo, former Tanganyikan High Commissioner in London, left the country to live in exile. During the last months of their existence and A.N.C. and P.D.P. were subjected to such harrassments as restrictions on their freedom to organize meetings, prosecution of some of their members and the failure to register district branches (registration being required by law) even though application had been made and the necessary registration fees paid. Later attempts by Mr. Tumbo to organize a new party from Kenya in the autumn of 1963 were fruitless. The subsequent fate of Mr. Tumbo, who had resigned from T.A.N.U. in 1962 because he disagreed with the Preventive Detention Act and the proposals for a one-party state, do not encourage the hope that independent criticism outside the party machine will be encouraged, for in February 1964 he

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<sup>1</sup> Report, p. 30.

was arrested by the Kenyan authorities as an undesirable immigrant and returned to Tanganyika where he was promptly detained under the Preventive Detention Act; he has been in prison ever since.

This Act, which was passed in September 1962, and the use which was made of it in the Tumbo case, is cause for disquiet to those who are anxious to see the Rule of Law upheld and view with sympathy Tanganyika's efforts to reconcile the one-party system with genuinely democratic government. The Act has a number of undesirable features. First, it empowers the Minister for Home Affairs to impose preventive detention at any time and not merely during a period of public emergency, thus disregarding the principle affirmed by the African Conference on the Rule of Law, organized by the International Commission of Jurists in Lagos Nigeria, in 1961, and attended by the present Solicitor-General of Tanganyika, that "except during a public emergency, preventive detention without trial is held to be contrary to the Rule of Law".<sup>1</sup> Secondly, preventive detention may be imposed for an unlimited period, subject only to annual review. Thirdly, the Minister's decision that a preventive detention order should be made may not be questioned in any court.<sup>2</sup> The only form of review is provided by the establishment of an advisory committee to which cases must be referred at least once a year and when the detainee makes representations to the Minister in respect of his detention. While the Committee must be informed of the grounds on which the order is made, and may interview the detainee, its powers are purely advisory and the Minister is not bound to follow its advice.

Thus, the situation in which the proposal to introduce a one-party state was adopted and elaborated was one in which the Government party, T.A.N.U., while it had the overwhelming support of the electorate, had at the same time given indications that it was not prepared to tolerate any organized opposition and was prepared to act ruthlessly to suppress it.

### **The Recommendations of the Commission**

The recommendations are summarized here as they have been modified by the N.E.C. and laid before the National Assembly as the basis of the new Constitution.

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<sup>1</sup> Conclusions of Committee II, 5 (I), at page 18 of the Report of the Conference.

<sup>2</sup> Section 3 of the Act.



## 1. The Character and Role of the Party

The basic point of departure for the recommendations of the Commission is that T.A.N.U. has the support and represents the aspirations of the broad mass of the people. Its concern is to ensure that a constitutional framework shall be established, within the context of the one-party state, that will enable the people to play a genuine and constructive role in the government of their country. It sees T.A.N.U. as a "mass Party through which any citizen of goodwill can participate in the process of Government", and bases this view on the fact that "the principles of the T.A.N.U. as set out in Article 2 of the T.A.N.U. Constitution do not contain any narrow ideological formulations which might change with time and circumstance. They are a broad statement of political faith. We believe they carry the support of the vast majority of the people of Tanganyika and must strike a responsive chord in men of goodwill in every civilized country in the world. A Party based on these principles and requiring adherence to them as a condition of membership would be open to all but an insignificant minority of our citizens and would, we believe, be a truly national movement."<sup>1</sup> Membership of the Party is thus to be open to all who accept its basic tenets, and is to be the means through which citizens play an active part in the political life of the nation.

## 2. The National Executive Committee of T.A.N.U.

The N.E.C. is at present composed of 17 members elected by the Annual Conference, and the 17 regional secretaries of the Party. In order to strengthen the links with other important bodies in the political life of the country the Commission recommends that the Secretary-General of the National Union of Tanganyika Workers and the Secretary-General of the Co-operative Union of Tanganyika should also be ex-officio members, and in order to enable it to co-ordinate its decisions with those of Government it is proposed that the Principal Secretary to the President of the Republic and the Attorney-General (provided he is a member of T.A.N.U.) should also be ex-officio members of the N.E.C. without the right to vote.

The N.E.C. is the policy-making organ of the Party, and is thus

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<sup>1</sup> Report, page 16.

concerned with the broad lines of policy which the Government will in due course implement. In the words of the Commission: <sup>1</sup> "At the meetings of the N.E.C. the basic assumptions of Government policy are frankly questioned and exhaustively debated". For this reason, the N.E.C. acquires considerable constitutional importance, and accordingly the Commission recommends that it be granted similar powers to those already enjoyed by the National Assembly to summon witnesses and call for papers, and that those of its members who are not also members of the National Assembly should be paid the same salary and allowances as are paid to Members of Parliament.

### 3. The National Assembly

While the N.E.C. of the Party is conceived to be the body responsible for the formulation of policy, the National Assembly is stated to be "primarily concerned with the more detailed task of giving effect to Government policy through appropriate legislative measures and exercising vigilant control over all aspects of Government expenditure". <sup>2</sup> The Commission goes on to say that "We regard it as a basic principle that the supreme law-making body in the State should be directly elected by universal suffrage and we could not contemplate any major departure from this principle." <sup>3</sup>

The Commission recommends that all candidates for election to the National Assembly should be members of T.A.N.U. and states: "Our conception of T.A.N.U. as a National Political Movement carries with it the implication that all organized political activity must take place within the framework of the Party itself." <sup>4</sup> Subject to this basic limitation, it is anxious to ensure that the electorate shall be given freedom to make a genuine choice of representative, while at the same time preventing an unlimited number of candidates from presenting themselves. It is therefore proposed that in each constituency there should be two candidates whose nomination must have been approved by the N.E.C. Nominations, supported in each case by 25 registered voters, will

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<sup>1</sup> Report page 16

<sup>2</sup> page 16.

<sup>3</sup> page 17

<sup>4</sup> page 18

be submitted to a special meeting of the T.A.N.U. District Conference for the constituency, the members of which would then vote for three from among the candidates nominated. The full list of nominations together with the votes of the District Conference would then be forwarded to the N.E.C. which would make the final choice of candidates.

Once the candidates have been selected, the Commission recommends that responsibility for organizing the election campaign should rest with the District Executive Committee (D.E.C.) of T.A.N.U. in the constituency and not with the individual candidates. Meetings and other campaign activities would be arranged by the D.E.C., and as a general rule candidates would address the public from a common platform under the chairmanship of a local T.A.N.U. official.

In addition to the elected members, and those nominated by the President under his power to do so, the Commission recommends that there should be two categories of *ex officio* National Members, that is to say the Regional Commissioners, both of Tanganyika and of Zanzibar where the Afro Shirazi Party is entrenched as the single party, who are a vital link between the Government (whose local representatives they are), the Party (whose Regional Secretary they are *ex officio*) and the people in their Regions; and fifteen further members to be elected by the National Assembly from a list of candidates submitted by the N.E.C. and chosen from nominations made by the National Union of Tanganyikan Workers, the Co-operative Movement, the Association of Chambers of Commerce, the University College and such other national institutions as the President may designate. These institutions are not to be confined to nominating their own members, and the Commission expresses the hope that nominations would be made from all walks of life in the community.

In addition, the President will have power to appoint members of the Revolutionary Council of Zanzibar to the National Assembly which is intended to become the representative body of the United Republic.

The Commission emphasizes the need for the National Assembly to be a real forum of debate and insists that, subject to the overriding obligation of Members of Parliament to remain loyal to the basic principles of the Party, "there should be complete freedom of discussion in the National Assembly and the right of members

to criticize and question should be acknowledged by Government and Party alike". In a Parliament in which only one Party is represented, there is no need for the strict discipline and preservation of a united front to survive when faced with an opposition, and "there is an opportunity for members to speak their minds freely and to subject to close critical scrutiny the legislative and fiscal measures proposed by the Government".<sup>1</sup>

#### 4. Central Government

The Commission recommends that the President of the Republic, as the head of state and symbol of national unity, should be elected by direct universal suffrage. Since he is the head of the United Republic of Tanzania it is proposed that a joint meeting of the Annual Conferences of T.A.N.U. and of the Afro-Shirazi Party should nominate a single candidate, and that the electorate should be asked to vote either for or against him. If the majority of votes is cast against the candidate thus put forward, the two parties should put forward an alternative name.

The Commission recommends that Ministers and Junior Ministers should be required to be Members of Parliament. "In a One-Party State the control over government placed in the hands of elected members of Parliament remains an essential feature of the democratic process. That control, in our view, cannot be really effective unless Ministers and Junior Ministers are themselves members of the National Assembly. The presence of Ministers and Junior Ministers in Parliament ready to answer questions and to explain and justify government policy emphasizes the responsibility of the Government to the electorate and prevents discussion in the Assembly becoming academic or unreal."<sup>2</sup>

#### 5. Local Government

Even before the Report of the Commission, there had been a considerable *de facto* unification of Party and Local Governmental functions in a single set of hands. The Regional and Area Commissioners, who are the local representatives of the Central

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<sup>1</sup> Report, page 21

<sup>2</sup> page 22

Government, are *ex officio* Regional and Area Secretaries of the Party, and the overlapping in the composition and functions of the local authorities and local executive committees of T.A.N.U. has given rise to considerable confusion. The Commission therefore recommends that there should be two classes of members of local government bodies in the future: first, the members of the D.E.C. of T.A.N.U. who would be *ex officio* members, and secondly elected members, who should be members of T.A.N.U. and in respect of whom candidates should be chosen by a procedure similar to that recommended for candidates for election to the National Assembly. The local authority will thus be, in effect, the D.E.C. of T.A.N.U. expanded by the addition of a number of elected members who, while elected by the population as a whole, are themselves members of T.A.N.U. The T.A.N.U. District Chairman will *ex officio* be Chairman of the local authority.

## 6. Rights of the Individual in the One-Party State

In the guidance given by the President of the Republic to the Commission he placed great emphasis on the rights of the individual and the Commission states that "we have had constantly in mind the need to ensure that any new arrangements we propose will not unnecessarily encroach on the freedom of the individual".<sup>1</sup>

It affirms that "The concern for human liberty and individual freedom . . . continues to be one of its (Tanganyika's) major preoccupations today", but rejects the solution of a Bill of Rights incorporated into the constitution. Its reasons for doing so are not entirely convincing, in particular since they impliedly concede that the Executive should be allowed to interfere with the rights of the individual in a manner that is not subject to the control of the courts. Thus, the Commission states, "In this transitional period" (from an expatriate to an indigenous judiciary) "the maintenance of the Rule of Law to which we attach the greatest importance requires particular care that occasions for conflict between the Judges and the Executive and the Legislature should be reduced to the minimum";<sup>2</sup> and, "Decisions concerning the

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<sup>1</sup> Report, page 30

<sup>2</sup> page 31

extent to which individual rights must give way to wider considerations of social progress are not properly judicial decisions. They are political decisions best taken by political leaders responsible to the electorate.”<sup>1</sup> The argument that the rights of the individual in any society depends more on the ethical sense of the people than on formal guarantees in law and that for this reason it would not be desirable to incorporate individual rights in a formal Bill of Rights but rather to encourage the growth of a consensus of views that will make it unnecessary runs completely counter to the conclusion reached by the jurists from the countries of South East Asia and the Pacific at the Bangkok Conference of the International Commission of Jurists held in February 1965, when they affirmed, “In countries where the safeguards afforded by well-established constitutional conventions and traditions are inadequate, it is desirable that the rights guaranteed and the judicial procedures to enforce them should be incorporated in a written constitution.”<sup>2</sup>

Nevertheless, the Commission does make an interesting and constructive recommendation designed to provide some safeguard for the ordinary citizen but “which will not have the effect of limiting the actions of the Government and Party in a way which could hinder the task of nation building.” It is as follows: “We, therefore, recommend, that the new constitution should provide for a permanent Commission to be appointed by the President, with a wide jurisdiction to enquire into allegations of abuse of power by officials of both Government and Party alike. We envisage a Commission of broadly representative character under the chairmanship of someone of high standing in T.A.N.U. We suggest that apart from the Chairman, who should be a full time appointment, there should be five members of the Commission. This would enable the Commission to split up into two groups for the purpose of touring the Regions. The Chairman and other members should not be eligible to hold office as Commissioners for longer than two years, and, accordingly, we recommend that three Commissioners should retire annually. The Commission should be empowered to summon witnesses and call for papers, including papers in the custody of Government Officers. It should not, however, be bound by rules of evidence or required to follow a code of procedure. In particular the Commission should not be obliged to disclose to the complainant information received from

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<sup>1</sup> Report, page 31

<sup>2</sup> Committee II, Conclusions, clause X(2)

other sources. We do not suggest that the Commission should be invested with any executive power. At the conclusion of its enquiry into any complaint the Commission should submit a report of its findings to the President, together with its recommendations where appropriate." <sup>1</sup>

This proposal, which has some affinity with the Ombudsman system in force in Scandinavia and New Zealand and shortly to be introduced in the United Kingdom and possibly in Canada, is a novel one which has relevance beyond the boundaries of Tanganyika and might well be studied in other countries of Africa. Its implementation and effectiveness will be watched with considerable interest.

### Conclusions

The chief weakness in the Report, from the point of view of the effectiveness of the system it proposes to introduce, may well be found in the lack of precision with which the powers of the N.E.C., the National Assembly and the Government, and the exact relationship between them, are defined. The formulation of policy is stated to be the responsibility of the N.E.C. Yet the Government, which is responsible for implementing it, is answerable not to the N.E.C. but to the National Assembly, and the only formal link between the Government and the N.E.C. seems to be the provision that the Attorney-General and Principal Secretary to the President shall be *ex officio* members of the N.E.C.

Again, there seems to be a risk inherent in the system, especially if it genuinely allows free discussion and the expression of varying views, that N.E.C. and Government, or N.E.C. and National Assembly, may in time develop divergent views and fail to agree on important policy matters, leading to a deadlock that could only be resolved by a general election. In such a situation, it is clear that it would be the Party, and not the elected representatives of the people, which would emerge victorious, for all candidates in the ensuing election would have to be nominated by the N.E.C.

Nonetheless, both the President of the Republic and the Commission are to be congratulated for the obvious concern they have shown to ensure that the one-party state to be introduced in

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<sup>1</sup> Report, pages 32-33

Tanganyika shall be a genuinely popular state designed to serve and not to oppress the people as a whole. Nevertheless, the dangers inherent in a one-party system should be obvious to all. It is true that in a particular country in a particular situation popular needs and aspirations may be such that a *de facto* one-party state develops, but once that position has been formalized there is the ever-present danger that the Party, instead of representing and responding to the voice of the people and being open to criticism and ready to change, may develop into a self-perpetuating instrument of oppression. If this happens to a party which is formally entrenched in power as the only legal party in the state, the results can only be disastrous. It is for reasons such as these that the South-East Asian and Pacific Conference of Jurists, already referred to, adopted the following conclusion: "Representative government implies the right within the law and as a matter of accepted practice to form an opposition party or parties able and free to pronounce on the policies of the government, provided their policies and actions are not directed towards the destruction of representative government and the Rule of Law." <sup>1</sup>

In so far as the decision to establish a one-party state is inconsistent with this principle, it is to be regretted, but even this fundamental objection does not deprive the recommendations of the Commission of their considerable value as the first thorough attempt to work out the implications of the realities to be found in many of the newly independent countries. It is to be hoped that the constitutional system to be set up in Tanzania will permit the free expression of ideas that do not currently represent T.A.N.U. policy, and that the Government will not in the future consider it expedient to resort to its powers under the Preventive Detention Act in order to silence opposition. The release of Mr. Christopher Tumbo would be the best possible indication of an intention not to rely upon its power under this Act and would be a magnanimous gesture marking the introduction of the new Constitution. For the future, it is vital that T.A.N.U. should remain a national movement within which different points of view can find their expression and changes can take place from within so that—in the words of President Nyerere—it "leaves no room for the growth of discontented elements excluded from its membership". <sup>2</sup>

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<sup>1</sup> Committee I, Conclusions, Clause VI

<sup>2</sup> J. K. Nyerere, *Democracy and the Party System*, Tanganyika Standard Limited, Dar es Salaam, 1962, page 42.



## DEATH OF MR. EDWARD S. KOZERA

The International Commission of Jurists learned with profound regret of the untimely death of its former Administrative Secretary, Mr. Edward S. Kozera. He died in New York on August 15, 1965, after a prolonged illness.

Born in Detroit, U.S.A., in 1923, Mr. Kozera served in the Pacific during World War II. After concluding his studies, he became at a young age Lecturer in Government at Columbia University, New York, distinguishing himself especially in the field of Eastern European research. In 1953, he was co-editor, with Professor J. Maisel, of an anthology "Materials for the Study of the Soviet System".

Mr. Kozera joined the International Commission of Jurists in 1954 at an early stage of its existence and devoted to it until 1964 all his untiring energy and enthusiasm. Through travel, correspondence and personal contacts, he championed the cause of the Rule of Law in all parts of the world and could justly pride himself on having as many friends as there are leading jurists associated with the Commission's international activities.

The administration of the Secretariat, first at The Hague and later in Geneva, the promotion of National Sections, the organization of the Congresses and Conferences in Europe, Asia, Africa and Latin America, all the many facets of the Commission's work, were indelibly imprinted with the personality and dedication of Mr. Kozera. Supporters of the Commission's objectives everywhere will remember his inspiring example and persuasive power. For him the Rule of Law and justice in its legal as well as economic and social meaning were prerequisites of international peace and of the pursuit of happiness within national boundaries. He was pledged to a relentless struggle against all forms of bigotry and discrimination.

Mr. Kozera's work in the International Commission of Jurists will remain a lasting monument to his memory.

Mr. Kozera leaves behind his widow and only daughter who may be assured of the deep sympathy of their numerous friends in Commission circles.

# ICJ NEWS

## SECRETARIAT

### EXECUTIVE COMMITTEE

The Executive Committee of the ICJ met in *Geneva* from June 4 to 6, 1965. Having disposed of a number of administrative questions placed before it, the Committee reviewed the position after the Bangkok Conference and considered possible follow-up measures; it also made a general examination of the progress made in the Commission's current activities and the orientation of its future work.

### BRITISH GUIANA COMMITTEE OF INQUIRY

The Government of *British Guiana* requested the ICJ to carry out an independent and impartial inquiry into the balance between the races in the civil service, the security forces and other sectors of government employment in British Guiana. The terms of reference of the Committee of Inquiry require it to ascertain existing conditions in the sectors in question, and in particular whether the selection, appointment, promotion and dismissal procedures applied in the Government service are such as to encourage or lead to racial discrimination; on the basis of its findings, the Committee is required to make such recommendations and suggest such remedial steps as it may consider necessary to eliminate imbalance based on racial discrimination, in such a manner as to ensure that the efficiency of the Government services and the public interest are maintained.

The ICJ gladly accepted this mission of international significance, the request for which is a further testimonial to its competence and objectivity and which is very much in line with the resolutions of the Bangkok Conference on the civil service in countries having racial problems. The Secretary-General himself travelled to Georgetown, the capital of British Guiana, on June 7, 1965, and had preliminary conversations with the Prime Minister and various Government authorities and leading personalities of the country including Dr. Jagan, Leader of the Opposition, the Chief Justice, the Attorney General and Trade Union leaders. On June 30, 1965, he announced in a press release the composition of the Committee of Inquiry, which is as follows:

- *Mr. Justice Séamus Henchy (Ireland)*, former Barrister and former Professor at the Faculty of Law of University College Dublin; Judge of the High Court of Ireland, as Chairman;
- *Dr. Felix Ermacora (Austria)*, Professor of Public Law at Vienna University, member of the European Commission of Human Rights, representative of Austria on the Human Rights Commission of the United Nations and special adviser of the Austrian Government on minority problems;

## NEWS

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— *Dr. Peter A. Papadatos (Greece)*, Professor at the Faculty of Law of the University of Athens, member of several law reform commissions, special adviser to the Greek Ministry of Co-ordination.

*Mr. David W. Sagar (Australia)* of the ICJ Legal Staff has been appointed Registrar of the Committee of Inquiry.

The Committee of Inquiry arrived in Georgetown on August 5, 1965 to begin its investigations. It concluded its hearings on August 22 and will submit its Report to the ICJ. The Report is expected to make an important contribution to the social advancement of the country and to its peaceful progress towards full independence.

## PUBLICATIONS

*The Report on the Bangkok Conference* has been published in English and French; it reproduces the Conference Working Paper and contains a full record of the proceedings of the Conference and of the discussions in its various Committees. Abridged versions in Spanish and German have been prepared.

The ICJ has also published a *Report on the First Regional Conference on Legal Education* in South-East Asia, held at the Faculty of Law of Singapore University. This report, published by the ICJ on behalf of Singapore University, has been widely circulated to Faculties of Law, Institutes of Comparative Law and Law Professors in Asia and elsewhere and has attracted great interest in all these quarters.

A revised and up-to-date edition of the brochure *Basic Facts* setting forth the objectives, organization and activities of the ICJ has also been prepared in the Commission's four working languages.

Lastly, the ICJ has published a number of *press releases* which have been widely reproduced in the world Press. Several *articles* on the ICJ, its activities and its objectives, have been published in various magazines abroad.

## STUDIES

The ICJ is undertaking a series of studies on the principal Supreme Courts and Constitutional Courts in the world—their organization, powers, jurisdiction and influence in the protection of fundamental human freedoms and the application of the principles of the Rule of Law. These studies will be published at regular intervals in the *Journal*.

The *Journal* will also contain a special section giving a summary of leading judicial decisions. The jurists of various countries will thus have an opportunity of making interesting comparisons and also be given access to decisions of importance relating to the principles of the Rule of Law.

## INTERNATIONAL MEETINGS

On June 21, 1965 the ICJ gave a dinner in Geneva in honour of Mr. P. B. Gajendragadkar, Chief Justice of India, to enable him to meet leading lawyers, diplomats and representatives of international organizations

in Geneva. The Secretary-General, Mr. Séan MacBride, presided. The Chief Justice gave an address on "The Indian Constitution—its first fifteen years". Mr. C. W. Jenks, Deputy Director General of the I.L.O., proposed a vote of thanks.

## MISSIONS

### GERMANY

At the invitation of the Government of the Federal Republic of Germany, the Secretary-General visited *Bonn, Berlin, Frankfurt-am-Main, Heidelberg, Karlsruhe* and *Freiburg-im-Breisgau*. Mr. MacBride had discussions with members of the Government and leading personalities of the German legal and academic world.

### LONDON

The Secretary-General was invited as guest of honour to address the Fourth General Assembly of the *International Press Institute*, in London on May 25, 1965. More than three hundred outstanding journalists, newspaper owners, publishers, editors, etc., representing the leading papers of thirty countries from all the continents of the world, participated in the General Assembly. Mr. MacBride, setting forth the ICJ's aims and activities, stressed, in particular, the ICJ's ceaseless struggle against all threats to the freedom of the Press. He also asked the Press to courageously expose violations of human rights and to make public opinion aware of the problems which endanger world peace and stability.

### PUERTO RICO

The Secretary-General represented the ICJ at the Fourteenth General Conference of the Inter-American Bar Association from May 22-29, in San Juan, Puerto Rico. Over one thousand lawyers from all countries of Latin America, Central America and the United States, as well as observers from other regions participated. The various legal problems facing the American Continent were discussed. Another Congress was held concurrently: that of members of the Judiciary of the American States, attended by representatives of all the Supreme Courts of the American States.

Mr. MacBride made a statement in which, *inter alia*, he strongly urged the conclusion of regional conventions and the establishment of regional Courts of Human Rights as one of the best safeguards for the Rule of Law and protection of human liberty.

### STRASBOURG

The Secretary-General went to Strasbourg on June 14, 1965 in response to an invitation from the Secretary-General of the Council of Europe and his staff, to study with him ways of further strengthening the co-operation between the Council and the ICJ in the legal domain.

## NEWS

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### NICE

The Executive Secretary, Dr. V. M. Kabes, represented the ICJ at the international colloquium held in Nice (France) from May 27-30, 1965 and organized by the *Association for the Development of World Law* on the theme "The Adaptation of the United Nations to the World of Today".

In his statement, Dr. Kabes advocated the strengthening of the existing United Nations machinery for the protection of human rights. He supported, in particular, the proposal to appoint a United Nations High Commissioner for Human Rights, an appointment which would remedy some of the existing gaps in that machinery.

### SAN SEBASTIAN

Dr. H. Cuadra, of the ICJ Legal Staff, conducted an international seminar held at San Sebastian (Spain) from June 20-26, 1965 for graduate students from a number of Latin American countries. The seminar had been organized by the *Service Européen pour les Universitaires d'Amérique Latine*, which has its headquarters at Fribourg (Switzerland), on the theme "Social ethics as a condition of development in Latin America". Dr. Cuadra spoke more particularly on "Social Ethics and the Access of Latin American Countries to Human Rights". Some sixty participants from seventeen countries—virtually the whole of Latin America—attended the Seminar.

## NATIONAL SECTIONS

### AUSTRIA

The annual meeting of the *Austrian National Section*, held near Salzburg (Austria) from May 24-26, 1965, was very successful. The Commission was represented by its Vice-President, Mr. A. J. M. van Dal and by the Executive Secretary, who was accompanied by two members of the Legal Staff, Miss H. Cartwright and Dr. J. Tóth.

The meeting took the form of a seminar on the theme "The Jurist and the Rule of Law". The lectures and discussions dealt with the following questions: "The Judiciary and the Rule of Law"; "The Bar and the Rule of Law"; "Legal Theory and the Rule of Law"; "The Administration and the Rule of Law". Some hundred participants took part in these working sessions. The *German National Section*, the *British National Section* and the *French National Section* were represented.

Eminent jurists from *Czechoslovakia*, *Hungary*, *Rumania* and *Yugoslavia* accepted the invitation of the Austrian section to attend the meeting. These jurists from Eastern Europe stressed their desire to maintain scientific contacts with their colleagues in Western Europe. Their attendance at the meeting of the Austrian Commission of Jurists provided an opportunity for an exchange of views and a confrontation of ideas which were both useful and interesting.

### CHILE

The *Chilean National Section* reports that the Chilean Government has undertaken a general renewal of the country's legal structure with a view once

more to instilling dynamism into the Law, within the framework of economic and social development, and that the Section is very closely and actively following the interesting developments.

## FRANCE

The Secretary-General, the Executive Secretary and Mr. Robert Kellerson of the ICJ Legal Staff attended the annual meeting organized by LIBRE JUSTICE, the *French National Section* of the ICJ, in Paris on July 4-5, 1965. Held in collaboration with the British National Section, it coincided with the tenth anniversary of the foundation of LIBRE JUSTICE. Accordingly, the participation was much wider than usual and jurists from eight countries (Austria, Belgium, France, Germany, Ireland, Netherlands, Switzerland and the United Kingdom) attended.

The theme of the colloquium was "Defamation in the Press and the New Communications Media". There were very fruitful discussions on the reports submitted on these questions by the British and French rapporteurs, which showed the difficulties and gaps in the existing legislation on the subject and the need, in view of rapid technical progress, of providing for new legal structures, harmonized at the international level.

At the end of the discussion, the meeting expressed the hope that the ICJ would set up a commission to formulate an *International Convention for the Press, Radio and Television*, covering in particular:

- The definition of imputations on the private life of individuals which amount to the tort of defamation or constitute a breach of duty giving rise to a right to damages;
- research into a system of criminal and civil liability to suppress the publication of information on a person's private life which is not justified by the legitimate need for information or by the right of the public to be informed;
- the preparation of a code of professional conduct and a Journalists' Charter that will correspond to the needs of the modern information media;
- the setting up at the international level of a Higher Press Council and the preparation of a Universal Convention on Television, consonant with the growingly generalised system of newspaper chains and broadcasting stations covering the whole world.

The closing event of the commemoration of the tenth anniversary of LIBRE JUSTICE was a reception given by the ICJ.

## INDIA

Reference was made in the last Bulletin to the fact that the *Indian Commission of Jurists* (National Section of the ICJ) had appointed a Commission of Inquiry into the problems of the exodus of minorities from Eastern Pakistan and that the Commission has published its report. The Indian Commission has since reported, among its more recent activities, that it organised a Seminar on the theme "The Executive and the Police" and that it proposes to organise other similar seminars in the near future and to undertake a series of publications under the general heading of "Indian Commission Series".

## NEWS

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The Indian National Section also reports that the *Commission of Jurists of the State of Mysore* held a seminar on "Legal Education in India" in May 1965.

### IRAN

Although the *Association of Iranian Jurists* is not, strictly speaking, one of its national sections, the ICJ has always followed the Association's activities, which constitute a valuable contribution to the struggle by jurists to uphold and promote the principles of the Rule of Law, with great interest. It should be stressed that the Association is carrying out a very vigorous campaign to this end, with the publication of numerous articles, a series of lectures given by its Secretary-General and, more recently, his broadcasts on Radio-Iran on "The Principles of the Rule of Law"—in Persian: "Hokumat Ghanum". The texts of these statements will be assembled and published in book form at the end of the year.

The Governing Board of the Association met in June 1965 and re-elected Mr. P. Kazémi Secretary-General.

### PERU

The ICJ learnt with great satisfaction of the election of Mr. Maximos Cisneros, Chairman of the *Peruvian National Section*, as President of the Inter-American Bar Association, to which all the Bar Associations of Latin America belong. Mr. Cisneros served as chairman of Committee II at the Commission's 1962 Congress of Rio de Janeiro. His election honours this outstanding jurist as well as the Peruvian section as a whole.

### UNITED KINGDOM

JUSTICE, the *British National Section*, held its annual general meeting on June 29, 1965. Its annual report, published on that occasion, shows the intense activity of this Section. The main tasks carried out during the past year include the publication by Stevens & Co. of the report of the joint working group set up by JUSTICE and the British Committee of the *International Press Institute* on "The Press and the Law".

The British section has also set up a number of Committees to study certain specific problems such as actions for personal damages and complaints against members of the legal profession. Reports have been prepared on problems studied and have been submitted to the Royal Commission on Trade Unions and Trade Associations and to the Committee on Legal Aid in Criminal Cases; recommendations have also been made to the Law Reform Committee and to the Criminal Law Revision Committee on the Law of Evidence.

The British Section now proposes to undertake a series of studies in depth on the effectiveness of existing procedures for making complaints against the shortcomings of individual lawyers; on the adequacy of the existing machinery for maintaining the standards of the administration of justice; and on the adequacy of the remedies available for those who fall victims of any shortcomings.

The British Section had 1,680 members in June 1965.

**UNITED NATIONS**

Dr. J. Tóth, of the ICJ Legal Staff, represented the ICJ at the annual *United Nations Seminar on Human Rights* held at Ljubljana (Yugoslavia) from June 8-22, 1965. The special subject chosen for debate this year was "Problems of Human Rights in a Multi-National State". In the course of the discussions Dr. Tóth stressed the importance of the Conclusions of the Bangkok Conference bearing precisely on the topic examined at the United Nations Seminar. He also made useful contacts with legal circles at Ljubljana, Zagreb and Belgrade.

The ICJ was represented at the 39th Session of the *Economic and Social Council of the United Nations* which was held at Geneva in July 1965.

On July 9, 1965, Mr. L. G. Weeramantry, Senior Legal Officer and Adviser on Asian Affairs, addressed the Council on behalf of the ICJ. Speaking on the proposal to appoint a United Nations Commissioner for Human Rights, he stated the views of the ICJ on the subject, i.e. that the appointment of such a High Commissioner would not only enhance respect for human rights throughout the world but would also greatly strengthen the effectiveness of the United Nations in the field of human rights.

Mr. Weeramantry also referred in his statement to the newly-established United Nations Institute for Training and Research; he stated that the ICJ regarded the Institute as a major contribution by the United Nations to the co-ordination and promotion of international action in the field of learning and added that the ICJ would extend to the Institute its fullest support and co-operation.

In the course of the Council's session, a number of delegations reverted on several occasions to the question of the appointment of a United Nations Commissioner for Human Rights.



RECENT PUBLICATIONS  
OF THE INTERNATIONAL COMMISSION OF JURISTS

*Journal of the International Commission of Jurists*

Volume V, No. 2 (Winter 1964): The Principle of Socialist Legality; Report on Pre-trial Release Practices in Sweden, Denmark, England and Italy; Justice and State Security; Legal Aspects of Civil Rights in the United States and the Civil Rights Act of 1964 (Parts I and II); The Rule of Law in the Somali Republic; The Rule of Law - Anglo-Saxon or World-wide? Book Reviews.

*Bulletin of the International Commission of Jurists*

Number 22 (April 1965): Dr. J. B. Danquah, Q.C.; Aspects of the Rule of Law: Bangkok Conference, Ceylon, East Germany, Ecuador, Honduras, Morocco, South Africa, United Kingdom; ICJ News.

SPECIAL STUDIES

*South African Incident: The Ganyile Case* (June 1962): This Report records another unhappy episode in the history of the arbitrary methods employed by the Government of South Africa. In publishing this report the Commission seeks to remind its readers of the need for unceasing vigilance in the preservation and assertion of Human Rights.

*Cuba and the Rule of Law* (November 1962): Full documentation on Constitutional legislation and Criminal Law, as well as background information on important events in Cuban history, the land, the economy, and the people; Part Four includes testimonies by witnesses.

*Spain and the Rule of Law* (December 1962): Includes chapters on the dieological and historical foundations of the regime, the single-party system, the national syndicalist community, legislative power, powers of the Executive, the Judiciary and the Bar, defence of the regime, penal prosecution of political offences, together with eight appendices.

*Report on the Events in Panama, January 9-12, 1964* (May 1964): A report by the Investigating Committee appointed by the International Commission of Jurists.

*Regional Conference on Legal Education of the University of Singapore Faculty of Law*: A report on the proceedings of the first regional conference, held in Singapore, August-September, 1962. (Published for the University of Singapore Faculty of Law).

*Executive Action and the Rule of Law* (June 1965): Report on the proceedings of the International Congress of Jurists, held in Rio de Janeiro, Brazil, in December 1962.

*The Dynamic Aspects of the Rule of Law in the Modern Age* (July 1965): Report on the proceedings of the South-East Asian and Pacific Conference of Jurists held in Bangkok, Thailand, in February 1965.

Published in English, French, German and Spanish  
and distributed by

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

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HENRI STUDER S.A., PRINTERS, GENEVA, SWITZERLAND