

FOR THE RULE
OF LAW

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A WORLD CAMPAIGN FOR HUMAN RIGHTS

PROPOSAL BY THE SECRETARY-GENERAL OF THE INTERNATIONAL
COMMISSION OF JURISTS ON HUMAN RIGHTS DAY, DECEMBER 10, 1965

By adopting the Universal Declaration of Human Rights on December 10, 1948, the General Assembly of the United Nations affirmed that the foundation of freedom, justice and peace in the world was the recognition of the inherent dignity and the equal rights of all members of the human family. It proclaimed the advent of an era in which human beings shall enjoy freedom of speech and belief and freedom from fear and want. Today, on the Anniversary of this historical instrument, it is our duty to take steps to secure greater respect for and observance of its provisions throughout the world.

The Declaration considers it vital that Human Rights should be protected by the Rule of Law if "man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression". The International Commission of Jurists is dedicated to the support and advancement of the Rule of Law, of which Human Rights and their effective recognition and protection form an essential part. Indeed, the Rule of Law, as defined by the International Commission of Jurists, is a dynamic concept to be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish the social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may find full expression. Its effective realisation thus requires the elaboration and acceptance of practical methods of implementing Human Rights throughout the world.

The International Commission of Jurists therefore welcomes the Resolution adopted on July 28, 1965, by the Economic and Social Council of the United Nations at its 39th Session, setting out its programme for the celebration of the year 1968 as the International Year for Human Rights. The Resolution invites all international organisations interested in Human Rights to co-operate in this programme with a view to making it a success.

To mark the twentieth anniversary of the founding of the United Nations, the Secretary-General of the United Nations, U Thant, issued a message in October 1965 and stressed :

“ If there was a time in the history of man when he ought to find it intolerable to live with the risk of war — which indeed is a risk of annihilation — and when he had the means to dispel it and to promote instead the well-being of humanity in every corner of the earth, that time is now. ”

He also called on governments, organisations and individuals alike to seize every opportunity and undertake every kind of positive effort to promote the peace and the well-being of mankind.

In response to these calls the International Commission of Jurists proposes to launch, in collaboration with other non-governmental organisations interested in Human Rights, a “ World Campaign for Human Rights ” and to consult with such organisations with a view to setting up a co-ordinating committee for the purpose. The International Commission of Jurists is convinced that such joint action on the part of the non-governmental organisations concerned will enable each of them to make a more effective contribution to the success of the International Year for Human Rights than could be achieved by a series of individual programmes of activity. In furtherance of the “ World Campaign for Human Rights ” the International Commission of Jurists will encourage its National Sections to take the initiative in forming national action committees in their respective countries.

Having regard to the interim programme for the International Year for Human Rights adopted by ECOSOC and to its own objectives, the International Commission of Jurists suggests the following programme for the “ World Campaign for Human Rights ”:

1. *National Level*

- (a) Organisation of local seminars and meetings ;
- (b) Survey of the status of Human Rights in each country ;
- (c) Promotion, where appropriate, of the acceptance of the Ombudsman concept ;
- (d) Promotion of the ratification of relevant international conventions.

2. *Regional Level*

Exploration of the possibilities of securing the adoption of Regional Conventions on Human Rights and the establishment of Courts of Human Rights.

3. *Global Level*

(a) Promotion of international covenants both on political and civil rights and on economic, social and cultural rights;

(b) Furtherance of the proposal for the establishment of a United Nations High Commissioner for Human Rights.

In its own sphere and within the framework of the "World Campaign for Human Rights" the International Commission of Jurists is already planning a number of activities as part of its contribution to Human Rights Year, 1968. These will include a work on the protection of human rights through the application of the Rule of Law, special articles in its publications and regional conferences and seminars.

The troubled world of to-day calls for new ideas and methods to eliminate the spectre of global destruction and assure liberty and justice for all. Accordingly, a special effort is now needed to give greater reality to the Universal Declaration of Human Rights. As Secretary-General of the International Commission of Jurists I appeal to all those who cherish the ideals which it embodies to join in the "World Campaign for Human Rights" and to make 1968 — the International Year for Human Rights — a new landmark in our common endeavour.

Seán MACBRIDE,
Secretary-General.

THE RECOGNITION OF HUMAN RIGHTS IN EASTERN EUROPE

I. HUMAN RIGHTS IN MUNICIPAL LAW

In order to ensure the recognition of human rights on a universal basis, it is essential that these rights be recognized as fundamental and also be incorporated and protected in the municipal law of countries.

In Eastern Europe, following the example of the 1936 Soviet Constitution, which included a catalogue of rights and duties of citizens, all constitutions contain a chapter dealing with human rights. It is well known, however, that for a considerable period the law on paper did not correspond to the law as applied. Human Rights were not, in fact, respected, but were violated on a mass scale; thus they appeared to be virtually non-existent. These violations were criticized by Western scholars and international organizations as they occurred. After a certain time lag, Soviet authorities themselves proceeded from 1956 on to a similar criticism, and most forcefully at the 22nd Congress of the Communist Party of the Soviet Union in October 1961¹. After the Congress many legal tenets of Andrei Vyshinsky, the Procurator General of the Great Purge and leading legal theoretician of the Stalinist period, were repudiated. With different timing and different emphasis similar criticism has been voiced against the neglect of human rights and legality in various other countries of Eastern Europe.

1. Legal science in these countries is now beginning to realize the lack of any communist doctrine in regard to human rights and individual freedoms, and first attempts have been made to

¹ Cf. publications of the International Commission of Jurists: *Justice Enslaved*, 1955; Socialist Legality in the Soviet Union as appraised by the 22nd Congress of the CPSU, *Bulletin* No. 13, May 1962; E. Zellweger, The Principle of Socialist Legality, *Journal*, Vol. 5, No. 2, 1964, pp. 163-202.

develop the concept of law in such a way as to include basic rights of the citizens.

The Warsaw Colloquium of the International Association of Legal Science in 1958 provided a revealing survey of the views held by leading jurists of Eastern European countries on the subject². Stanislaw Ehrlich of Poland asserted that the concept of legality is inextricably linked with the protection of human rights, and that this link is generally admitted in countries under the communist regime. Jivko Stalev of Bulgaria noted that a socialist legal system guarantees different rights for its citizens than a bourgeois one: a socialist state based on the socialist ownership of production puts the right to work and other economic and social rights in the forefront. Ehrlich maintained that the difference in political systems does not lead necessarily to a different catalogue of civil rights, and indeed, in both systems the same rights are recognized as fundamental. Then he sought to answer the basic theoretical question of the role of individual human rights in a socialist system. In his view, marxist-leninist socialism offers a possibility of increasing the number of human rights, the basic aim of socialism being the full self-assertion of the individual; the self-assertion itself speeds up the construction of socialism by encouraging individual initiatives in the socialist society. He therefore strongly underlined that it is in the interest of the consolidation of Socialist Legality to assure a harmonious development of the economic and social structure of socialism and of individual rights. Radomir Lukić from Yugoslavia held that a socialist state is obliged to safeguard human rights even if this obligation is of a political and not a legal character. Imre Szabó from Hungary emphasized that rules pertaining to the rights and duties of citizens should be published in the Official Gazette, as is done in Hungary. Winding up the discussions of the Colloquium, P. S. Romashkin, then Director of the Institute of State and Law of the Soviet Academy of Sciences, found that the need to insert in the definition of Socialist Legality the concept of the rights and freedoms of the citizen was amply proved. It was also said that human rights and freedoms are derived not from Natural Law, but are the result of a long political struggle for the realization of these freedoms and have become an integral part of human culture.

² Le concept de la légalité dans les pays socialistes, *Zeszyty Problenowe Nauki Polskiej*, Cahiers de l'Académie Polonaise des Sciences, XXI, Warszawa, 1961.

2. Law reform has become in the last decade one of the major characteristics of social development throughout Eastern Europe. These reforms have considerably improved the legal position of the citizen and shown a significant tendency to eliminate the elements of terror inherent in a totalitarian system. In the Soviet Union, this positive trend was manifested in the new criminal legislation of 1958 which granted a higher degree of protection of civil rights. Similar reforms are taking place in other Eastern European countries as well. Their scope remains, of course, subject to the political and economic systems of the respective countries. Moreover, opposite trends can also be observed; they are noticeable mainly in the re-establishment or strengthening of centralized bureaucratic controls.

In spite of all its limitations, the recent development has engendered a new approach to law in general and to individual human rights in particular. In a recent discussion in Czechoslovakia, for instance, Professor Pavel Levit recognized the importance of law for the creation of social relations, while the classic marxist doctrine had restricted it to a mere reflection of existing economic relations. Another speaker, Frantisek Samalik, insisted on the need for private initiative stimulated by the protection by law of the individual's personal sphere³. Along similar lines, a Czechoslovak legal writer, Zdenek Mlynar, sees the humanitarian content of socialism in the right of people to become gradually active creators of their lives rather than mere objects of regulations who should be "manipulated" into the "paradise" of an ideal future society⁴.

3. The constitutional development of Eastern European countries also shows signs that human rights are receiving growing emphasis.

In the Soviet Union, R. S. Romashkin has proposed that in the draft Soviet constitution which is now being elaborated all the basic rights and duties of the citizens be set out and that the right of petition and the principles of "nulla poena sine crimine" and "nullum crimen sine lege" be included in the catalogue of fundamental rights and freedoms.

³ *Pravnik*, Prague, vol. 104, No. 3 (1965), pp. 264-278.

⁴ *Pravnik*, Prague, vol. 104, No. 5 (1965), p. 475.

In Hungary, István Kovács has given an account of a new approach in the science of socialist constitutional law, which gives the civil and political rights of citizens equal emphasis with their economic and social rights. In his book he asked for a detailed elaboration of individual political rights and for a differentiated system of legal institutional safeguards for the basic rights and freedoms.

The Constitutions enacted recently in Yugoslavia (1963), and in Rumania (1965) reflected the emphasis thus put on such requirements⁵.

II. INTERNATIONAL PROTECTION OF HUMAN RIGHTS

1. *The Policy Rejecting International Implementation*

The Soviet Union and other states of Eastern Europe have adopted a stand concerning international co-operation in the field of human rights according to which national sovereignty excludes any kind of international implementation. This concept boils down in fact to the negation of an effective international protection of human rights.

The first (and only) Soviet treatise dealing with the international protection of human rights was written by A. V. Movchan and published in 1958. The book gives a historical survey of the problem starting with the preparation of the United Nations Charter, followed by an analysis of its relevant provisions, a history and evaluation of the draft International Covenants on human rights, prepared by the U.N. Commission of Human Rights and the Third Committee of the General Assembly. The author casts the Soviet Union in the role of the active and persevering supporter of the rights of man, whose proposals decisively shaped the United Nations Charter, the Universal Declaration and the draft Covenants. According to him, the Soviet delegation, led in the post-war period by Andrei Vishinsky, played a major role in securing the incorporation of the protection of human rights among the basic tasks of the United Nations. These achievements were credited by G. I. Tunkin, in his Preface

⁵ *Bulletin* of the International Commission of Jurists, No. 17, December 1963, on Yugoslavia; No. 23, August 1965, on Rumania.

to the work in question, to "the superiority of socialist democracy" embodied in the 1936 Soviet Constitution. At the same time, the stalemate which developed in the United Nations in the debates on the draft Covenants was also attributed to the reluctant attitude of Western countries, which, according to G. I. Tunkin, cooled down towards the international protection of human rights and utilized the idea only "to launch ideological attacks against the Soviet Union and the People's democracies". The elements in international protection most criticized by the Soviet Union were the measures of implementation proposed for the draft Covenants in general, the right of individual petition and the establishment of an international adjudication body or of a United Nations Attorney-General for dealing with violations of human rights in particular.

Delegates of the Soviet Union and other East European countries stated on many occasions that the proposed measures of implementation would result in "unlawful interference in the internal affairs of states, and a gross infringement of Article 2, paragraph 7 of the Charter". In their view the implementation of these measures was entirely within the internal competence of each sovereign state. Yugoslavia held the same views until 1953. Since that time it has aligned itself with the system of implementation as adopted in the final draft of the Commission on Human Rights.

However, a proposal of the Soviet Union to proclaim that the implementation of the provisions of the Covenants on Human Rights is entirely for the domestic jurisdiction of states was defeated by a large majority in the 5th General Assembly in 1950.

Though the responsibility for the almost complete failure of the United Nations to arrive at an acceptable arrangement for international protection cannot be attributed to any single state or group of states, it is evident that at that time the negative attitude adopted in Soviet theory and in the policy based upon it contributed considerably to the impasse.

It should be mentioned that Lauterpacht drew attention in 1950 to the possibility of changes in this policy⁶. Indeed in the

⁶ H. Lauterpacht: *International Law and Human Rights*, 1950, p. 301, cited by Manouchehr Ganji; *International Protection of Human Rights*, Geneva, 1962.

1960's Soviet policy concerning human rights shows signs of becoming less rigid.

2. *The Policy of Peaceful Co-Existence*

In the first part there were examined new trends in the legal science, practice and constitutional development of countries in Eastern Europe. A similar trend can be observed in the foreign policy and the theory of international law of these countries. Communist jurists refer to this new policy line as that of peaceful co-existence. Much has been written on the exact meaning of this term. For the present purpose may it suffice to recall that this policy has been defined in its contemporary form and meaning in the 1961 Programme of the CPSU as "the peaceful competition between socialism and capitalism on an international scale" and as "a specific form of class struggle" intended to triumph eventually over all adversaries or enemies of world communism. It involves the abandonment of the doctrine of the inevitability of war between socialist and capitalist countries and is a major point of controversy between the Soviet and Chinese communists.

The trend in the development of the doctrine of international law as propounded in the Soviet Union and other Eastern European countries offers a convincing illustration to Harold D. Laswell's thesis that

The doctrines of any political system are open to changes of many kinds particularly in the intensity with which they are held and the specific interpretations to which they give rise.⁷

These changes "in intensity" and "in specific interpretations" should be reviewed here in the particular field of the international protection of human rights. Compared with previous policy, a somewhat modified stand can be observed in a series of recent developments of which the two which seem to be the most significant will be outlined here.

At the Seventeenth Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, held in Geneva in January 1965, Mr. Arcot Krishnaswami of India sub-

⁷ Harold D. Laswell: "Introduction: Universality versus Parochialism", in M. S. McDougall/F. P. Feliciano: *Law and Minimum World Public Order: the Regulation of International Coercion*, Yale University Press, 1961, pp. xxii-xxiii.

mitted a draft resolution asking for further measures in the implementation of the Genocide Convention of 1948. Such measures should include an "international organ for the investigation and assessment of allegations of genocide". Mr. Krishna-swami pointed out that the General Assembly, in adopting the Convention, had considered the question of international jurisdiction and had referred to the trial of persons charged with genocide by such international penal tribunal as may have jurisdiction over the contracting States that have accepted its jurisdiction. There is an urgent need, he continued, for an international body which would endeavour to prevent the crime of genocide before it actually occurred on a massive scale. Such a body should be able to investigate and to assess allegations of genocide and to take the steps necessary to halt at its outset the deliberate destruction of a national, racial, religious or ethnic group.

The suggestion put forward by Mr. Krishnaswami was warmly supported by several members of the Sub-Commission and adopted unanimously.

Mr. Nasinovsky of the Soviet Union expressed the view that the proposal was an extremely important and necessary one, as it aimed at the effective implementation of the Convention on the Prevention and Punishment of the Crime of Genocide. He pointed out that the climate of public opinion had changed considerably since that Convention had been adopted in 1948, and that in subsequent years effective measures had been adopted for the implementation of less important conventions.

The Twenty-First Session of the Commission on Human Rights in March 1965, and the Thirty-Ninth Session of the Economic and Social Council in July 1965, examined a draft resolution of Costa Rica, entitled "Election of a United Nations High Commissioner for Human Rights".

The essence of this proposal was endorsed before the above-mentioned Sub-Commission by Mr. Seán MacBride, Secretary-General of the International Commission of Jurists⁸. The High Commissioner should be absolutely independent and free to report objectively on all systematic violations of human rights to the Economic and Social Council and to the General Assembly. His task would include the examination of the periodic reports of governments on the implementation of human rights.

⁸ United Nations Document, E/CN.4/Sub.2/SR.456.

The Costa Rican proposal gave rise to interesting discussion in both the Commission on Human Rights and the Economic and Social Council. In the Commission, representatives of the Soviet Union and other East European countries opposed the discussion of the proposal as "contrary to the principle of the Charter of the United Nations, which emphasizes non-interference in the internal affairs of States", a standard argument against measures of implementation. At the session of the Economic and Social Council the Soviet representative opposed "any hasty decision which might prejudice the very complex question of the application of human rights, which should be considered in the framework of the debate of the General Assembly"⁹. As the main substantive argument against the proposal he advanced the contention that such authority as was proposed for the High Commissioner for Human Rights "could not be conferred on one person". Thus the basis of opposition was shifted from the principle of non-interference to the composition of the supervising international organ.

Similar shifts in emphasis observed in the theory of international law have led some scholars in the West to believe that the policy of peaceful co-existence expresses on the part of East European countries, ideological conflicts notwithstanding, a common interest in survival, secured by minimum rules of world order. It is to be hoped that future events confirm the validity of such optimistic expectations, the fulfilment of which would certainly facilitate the implementation of human rights on the international level.

The Twentieth Session of the United Nations General Assembly inscribed on its Agenda measures for implementation of the draft International Covenants on Human Rights and the programme for the International Year of Human Rights to be held in 1968. The creative development of these tasks will depend considerably upon the degree to which Eastern European countries will pursue the trends outlined above.

⁹ United Nations Document, E/AC.V/SR.518.

THE EUROPEAN COMMISSION OF HUMAN RIGHTS AND THE EUROPEAN COURT OF HUMAN RIGHTS: RECENT DEVELOPMENTS

The International Commission of Jurists has always followed the work of the Council of Europe with the greatest interest, more particularly as regards the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, in many respects, can be regarded as an example and, at the same time, as a test. This Convention, its methods of application and its repercussions on both international law and internal law have already formed the subject of frequent commentaries, the I.C.J. for its part having devoted several studies to this subject (see *Bulletin* No. 12 of September 1961 and No. 18 of March 1964, and *Journal* Volumes IV/2 of 1962 and VI/2 of 1965). It is therefore the intention of the present article merely to draw attention to the fact that the system instituted by the Council of Europe has not remained a purely theoretical concept but is something which has started well and is working effectively.

It need hardly be recalled that the European Convention goes beyond merely reaffirming, at the international level, the existence of a certain number of fundamental rights accruing to the individual. The original feature introduced by the Convention is the establishment and implementation of a proper legal system guaranteeing at the international level the rights which are recognized under the Convention. With such a system, ordinary citizens acquired virtually for the first time the right of direct access to an international judicial organ, a facility of which the citizens of Europe have made ample use. On this, the figures speak for themselves: up to December 31, 1964, 2,388 individual applications were lodged, as against only three applications lodged by States. This figure alone serves to illustrate the considerable body of case-law which may eventually be built up in a field where everything had to be built from scratch.

It should be noted that many foreigners, non-nationals of contracting countries, have also availed themselves of the remedy instituted by the Convention. In the course of 1964 alone, of a total of 293 applications, 50 were lodged by persons who were not nationals of the countries against which they lodged applications alleging violation of their fundamental rights. Such applicants included stateless persons, nationals of Eastern European countries—Hungary, Lithuania, Poland, Czechoslovakia and Yugoslavia—an Israeli, an Algerian, even an American and a Russian. Hitherto the bulk of these applications has been against the Federal Republic of Germany, Austria, and, to a lesser extent, Belgium and the Netherlands; very many of these cases related to the right of asylum and to deportation or extradition proceedings. The right of asylum is not protected by the Convention, but it was possible to raise the question indirectly by invoking Article 3 thereof, which prohibits inhuman treatment. By a decision of October 6, 1962 the Commission of Human Rights recognized for the first time that the expulsion of a foreigner to a particular country could constitute inhuman treatment; the Commission had previously hesitated in accepting an interpretation which could so easily lend itself to abuse. The liberal attitude adopted by the Commission has since been reaffirmed on several occasions, for example in a decision of March 26, 1963 (Application 1802/63) which contains the following: "It is true that the deportation of a foreigner to a particular country may, in exceptional circumstances, give rise to the question whether there had been 'inhuman treatment' within the meaning of Article 3 . . . Similar considerations might apply to cases where a person is extradited to a particular country in which, due to the very nature of the régime in that country or a particular situation in that country, basic human rights, such as guaranteed by the Convention, might be either grossly violated or entirely suppressed."

This trend is also to be found in a decision of June 30, 1964 (Application 2143) in which the Commission states that it had satisfied itself, on its own initiative, that extradition did not constitute inhuman treatment, that it "had considered that, before giving a ruling, it should verify that such was not the case in the matter at issue and, for this purpose, had requested official clarification from the respondent Government; that the information supplied had, in the view of the Commission, established that the circumstances surrounding the extradition in

dispute were not such as would cast doubt on the compatibility thereof with the Convention."

On the other hand, it must be admitted that the procedure is still very slow and complicated and that ordinary private persons wishing to avail themselves of this remedy for the safeguard of their rights are handicapped by insufficient knowledge of the law or by the lack of financial means adequate to enable them to retain counsel. Symptomatic in this connection is the fact that during the past three years only 8% of the individual applications were lodged through the intermediary of a lawyer.

An important step towards making justice more accessible to citizens and towards ensuring better protection of their rights was taken with the decision of the Committee of Ministers of the Council of Europe giving the Commission of Human Rights power to grant, at its sole discretion, legal aid in cases in which the Commission considers it desirable to do so for the purpose of enabling it to carry out its duties. The Commission made use of this power for the first time in October 1964 in the case of *Wichert v. Federal Republic of Germany*, deeming that the complexity of the legal issues raised on the question of the admissibility of one of the applications lodged by Mr. Wichert necessitated that he have the assistance of counsel, the applicant himself having already submitted evidence that he did not dispose of the financial means to pay for the services of counsel. The cost of legal aid so provided is borne by the Council of Europe. It is worth noting that this system of legal aid is both liberal and different in conception from that provided under internal law in the continental systems; indeed, it goes far beyond such classic forms of legal aid. The applicant's legal representative must be a person having legal qualifications—barrister-at-law, solicitor or professor of law—and he may have recourse to the service of several lawyers if necessary. The aid covers not only the fees of the lawyer(s) but also travelling and subsistence expenses and "other necessary out-of-pocket expenses incurred by the applicant or by the person assisting or representing him".

Digressing slightly, mention may be made here of a record compiled by the Council of Europe, and which is said to be far from exhaustive, listing over the past five years 125 decisions of national courts of 12 contracting countries (Austria, Belgium, Federal Republic of Germany, Greece, Ireland, Iceland, Italy, Luxembourg, Netherlands, Norway, Sweden and Turkey) in

which reference is made to the Convention. This is a further indication that the Convention has to a certain extent won acceptance and that in their own countries citizens are making wide use of the remedy for the safeguarding of their rights which is granted to them by Article 13 of the Convention, which provides that "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority, notwithstanding that the violation has been committed by persons acting in an official capacity."

To revert to developments in Strasbourg, and by way of illustration, examination of the most recent cases still *sub judice* reveals that, in general, they come under three headings: those relating to liberty of person; those relating to freedom of conscience; and those relating to the rights of minorities.

In the first group, six cases of prolonged detention before trial were recently declared admissible by the Commission of Human Rights and are at present at different stages of the proceedings. They comprise four individual applications against the Austrian Government (*the Matznetter, Neumester, Stogmuller and Rafael cases*) and two individual applications against the Government of the Federal Republic of Germany (*the Wemhoff and Gericke cases*). The period of detention being petitioned against varied, according to the case, from 18 months to three years. These applications were founded basically on Articles 5 and 6 of the Convention which guarantee respect of liberty of persons and of the right to a fair hearing, particularly Article 5, paragraph 3, which is designed to ensure that detention before trial should not be excessively long: it provides that "Everyone arrested or detained . . . shall be brought promptly before a judge" and that he shall be entitled to release pending trial, such release being possibly conditioned by guarantees to appear for trial, or to trial within a reasonable time. The point of issue obviously turns on the interpretation of what constitutes a "reasonable time". Generally, the respondent Governments maintain that the length of detention was justifiable and rendered necessary by the behaviour of the accused, by the risk that he would evade justice by fleeing the jurisdiction or by tampering with the evidence, and by the difficulties encountered in the course of the investigations. The Commission, for its part, has always held that it was competent to judge whether the period

of detention was excessive or not, judging each case on its merits and "not *in abstracto*, but in the light of specific circumstances such as the complexity of the case and the procedures followed by the applicant himself" (Application No. 892/60, decision of April 13, 1961). Thus, for instance, the Commission held a period of nearly two-and-a-half years' detention to be reasonable in a case in point (Nielsen case, decision of September 2, 1959) and a period of 17 months in a more recent case (decision of October 4, 1962). It should be emphasized that the six cases now pending have been declared admissible, one after another, since July 1964 and that some observers see in this a development which amounts almost to a reversal of the case-law on the subject. In this field — taken in a broad sense, since, of course, not all the cases relate to pre-trial detention — another development has also been noted: the growing abundance of applications lodged by detained or interned persons. During the past three years such applications constituted, on average, half of those lodged with the Commission whereas in 1961 they represented only one-third and in preceding years only one-quarter or one-fifth of the total.

As regards the second group of cases now pending, this can be illustrated by the case of *Grandrath v. Federal Republic of Germany*. This is a case of conscientious objection based on religious convictions. Mr. Albert Grandrath, a German national, a minister of the sect of "Jehovah's Witnesses" and recognized under German Law as a conscientious objector, refused in 1962 to comply with a summons to perform non-military service in lieu of military service and brought an appeal for revocation of the summons, an appeal which is still pending before the Federal Administrative Court. In the meantime, in June 1963, he was found guilty of desertion and the appeal he brought before the Court of Appeal was dismissed. Finally, an appeal on constitutional grounds against both the summons to perform non-military service and against the conviction was dismissed in February 1964 by the Federal Constitutional Court and Mr. Grandrath served his prison sentence from October 1964 to April 1965. He is pleading violation of Article 9 of the Convention which guarantees freedom of thought, conscience and religion, and freedom to hold opinions. The violation, he claims, arises out of the very provisions of the 1962 Act respecting obligatory military service and of the 1960 Act respecting non-military service in lieu of military service, and out of the application of

these Acts to him, leading to the bringing of criminal proceedings against him and to his conviction. Mr. Grandrath also invokes Article 14 which guarantees the enjoyment, without discrimination, including discrimination on the ground of religion, of the rights and freedoms set forth in the Convention, and Article 4 which prohibits forced or compulsory labour. He alleges that he has been subjected to discriminatory treatment, since ministers of the Catholic and Protestant confessions are exempted not only from military service but also from non-military service in lieu, whereas such exemption was refused him. The respondent Government states that such exemption is a special privilege granted by the Government at its discretion, and does not constitute a right; in consequence, to the extent that the petitioner claims the right to exemption, his application is in no way related to any of the rights guaranteed by the Convention. Mr. Grandrath contends that this alleged privilege granted to ministers of religious confessions itself constitutes a large measure of the freedom of religion and of the exercise of that freedom and is in consequence protected by the Convention. In its decision of April 23, 1965 which, following the hearing of pleas, declared Mr. Grandrath's application admissible, the Commission held that his allegations were not manifestly ill-founded and that the complexity of the issues raised merited searching examination.

In the case of Belgium, the issue now before the Council of Europe involves a whole series of very delicate and very important matters involving minority rights raised by the linguistic question. Nine applications, described as "linguistic" because they arise out of the duality of language as between Flemish-speaking Flamands and French-speaking Walloons and out of the ensuing politico-social repercussions, are at present before the Commission. One of these applications was lodged by inhabitants of the town of Mol and its surroundings; another was lodged by a non-governmental organization "The Regional Association for the Defence of Liberties" in the name of 165 heads of families in the Poursion region; both these applications are at present before a Sub-Commission for examination. Six other applications lodged by inhabitants of the towns of Alsemberg, Beersel and Krasinem, near Brussels, and of the cities of Antwerp, Ghent, Louvain and Vilverde have been declared admissible, and on June 15, 1965 the Commission of Human Rights, having adopted its Report on the issue, referred these

applications to the European Court of Human Rights for decision. Finally, the ninth application was lodged by inhabitants of the town of Lecuw-St. Pierre and the Commission will soon be called upon to rule on its admissibility.

All these applications were lodged by French-speaking Belgians and, in essence, contest the compatibility of Belgian legislation respecting education with the provisions of the Convention and plead that the legal provisions in dispute should be adapted to meet the requirements of the Convention. The position is that, under the legislation, Flemish is the official and exclusive language of the administration, courts and schools in areas with a Flemish majority, the same applying to French in areas with a Walloon majority. It therefore happens that in some localities where Flemish is the official language, the French-speaking minority find themselves, according to them, faced with the dilemma of either abandoning their language and culture and agreeing to their children being educated through the medium of the Flemish language or sending their children to French-language schools in localities outside their place of residence, or in any case a long way from their homes—a matter which sometimes gives rise to very difficult family problems and, moreover, may adversely affect the children in their school careers.

In support of their applications the petitioners invoke Article 2 of the Protocol to the Convention which provides that “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”; Article 14 of the Convention which prohibits discrimination on any ground and particularly on grounds such as language, race or association with a national minority; and Article 8 which guarantees everyone the right to respect for his private and family life. They also invoke Articles 9 and 10 which guarantee, respectively, the right to freedom of thought, to manifest one’s beliefs and to freedom of expression. The Commission, however, held the applications to be inadmissible on this point, noting that neither these Articles nor any other Articles of the Convention protect “linguistic freedom” as such, and went on to point out that the right, claimed by the applicants, to have the impress of their own personalities and of the culture they profess accorded a

leading place among the factors governing the education of their children, so that the outlook of the latter will not become alien to that of their parents, falls outside the scope of Articles 9 and 10.

The European Court of Human Rights is thus now dealing with six of these linguistic applications, which, in reality, constitute a single case, the Belgian linguistic case. Its decision and the repercussions that it has will not fail to arouse great interest. It should be pointed out that the limited period for which Belgium had expressly accepted the compulsory jurisdiction of the Court expired a few days after these cases had been referred to it and that Belgium has renewed it for two years. When dealing with these cases, the Court will for the first time sit in the new "Palace of Human Rights", the first Court building of its kind in the world, which has been built in Strasbourg and was inaugurated recently. To date, the Court has dealt with only two cases, *De Becker v. Belgium* in 1960 and *Lawless v. Ireland* in 1961. The following may serve to explain this limited activity: the Commission acts primarily as a conciliation body, and seeks to effect a friendly settlement; the bringing of a case before the Court — only the contracting states concerned, or the Commission of Human Rights established by the Convention, acting as representative of the general interests of the European community, can do so; and, finally, the fact that only nine of the contracting states have recognized the compulsory jurisdiction of the Court. Be that as it may, and perhaps largely as a result of the very nature of things, in practice the political organ of decision — the Committee of Ministers of the Council of Europe — has overshadowed the judicial organ instituted by the Convention. Nevertheless the question can now be asked whether it was merely the particular importance and scope of the matters at issue which induced the Commission to refer the Belgian linguistic case to the European Court or whether such a step is indicative of a change in the practice followed heretofore. In any case, the situation offers possibilities of new developments which merit the closest attention.

RECENT DEVELOPMENTS IN GHANA

1. *The One-Party State Referendum*

Ghana is today by the terms of its Constitution a one-party state; the party, the Convention People's Party (C.P.P.), claims that this represents the wishes of the overwhelming majority of the population. A consideration of the circumstances in which the constitutional change was made, however, leaves the outside observer unconvinced. It is true that the published figures show that, at the referendum on the proposal for a one-party state, 93.69 % of registered voters voted — 92.81 % in favour of the proposal and 0.88 % against. It will, however, be recalled that at the time of the referendum, which was held in January 1964, the members of the former opposition party were all either in exile or in detention; that a massive propaganda and pressure campaign was conducted by the C.P.P. to ensure that the electorate would vote; that local party branches were active in ensuring that everyone in their area went to the polls; and that two correspondents of the *Manchester Guardian*, who were invited by the Ghanaian Government to observe the freedom of voting, reported that the explanation of the voting figures "lies in a mixture of intimidation and ballot-rigging, which ranged from the farcical to the brutal" (*Guardian*, February 3, 1964).

They found that, prior to the poll, voters were warned, by press and radio and at local meetings, that the way they voted would be known and that anyone failing to vote or voting "No" would be punished as a counter-revolutionary. This was possible because each voter's ballot paper was marked with a serial number appearing against his name in the electoral register. Methods varying from a threat to cut off a village's water supply to the prosecution and conviction of a man who tore down a C.P.P. poster were employed. During the poll itself, in some polling booths the "No" box had its voting slot covered over and secured. In others, late voters were given as many as 40 voting slips to put in the "Yes" box. In yet others, voters had to place their slips in the appropriate box in the full view

of officials. The observers found that, "it was apparent from this blend of falsification and coercion, that the party had told its key officials from district to district, to find their own way to the agreed end".

Broadcasting to the nation after the referendum on February 5, 1964, President Nkrumah said: "The stage is now set for us to embark upon the next stage in our struggle to bring about a better way of living . . . This stage demands that everyone within our society must either accept the spirit and aims of our revolution or expose themselves as the deceivers and betrayers of the people."

The implications of this warning were not slow in coming.

2. *Dismissal of Judges*

As was reported in *Bulletin* No. 18, one of the proposals submitted to the referendum was the granting of power to the President to dismiss judges of the superior court "for reasons which appear to him sufficient". President Nkrumah lost little time in making use of this power and in March 1964 he removed three judges of the Supreme Court and one judge of the High Court.

3. *Academic Freedom*

The first hint that the universities would no longer be allowed to function free from Government interference came before the referendum when an English Professor and a Ghanaian lecturer at the University of Ghana were arrested on January 17, 1964, in the face of widespread student opposition.

This step was followed by an attempt to gain control over Ghanaian students studying abroad by the demand that they should surrender their passports at the Embassy or High Commission for custody, a demand which most students—many of whom belong to opposition organizations abroad—defied.

The next move was an announcement that scholarships awarded for courses at Ghanaian University institutions would be reviewed annually "on the basis of satisfactory performance and good conduct". The pro-Government *Ghanaian Times* commented: "... the hall-mark of good conduct... should be close identification with the spirit and objects of the Party."

It went on to acclaim the obligation to support the introduction of a one-party Socialist democracy and added: "In the performance of this constitutional duty, it is imperative that our universities must be brought to heel."

A purge of the university teaching staffs followed shortly after, commencing with the dismissal and deportation of four American, one British and one West Indian lecturers, including the head of the University of Ghana Law School. A week later, a well-organized and large-scale demonstration of C.P.P. supporters flooded the University, shouting hostile slogans and doing considerable damage to University property. The Government next announced plans for the establishment of Party cells in the universities.

In March 1964 it was reported that the President and other officers of the Ghana Students Union—which had earlier protested against Government actions—had been arrested. In September 1964 it was announced that all students entering any of Ghana's three universities, and all students going abroad, would in future have to do a two-week "orientation" course at the Kwame Nkrumah Ideological Institute at Winneba, which was founded in 1962 to expound and teach the principles of Nkrumahism.

In March 1965, the Vice-Chancellor of the University of Ghana, Dr. Conor Cruise O'Brien, in the course of an address stated that "there are clear signs that influential elements in the community wish to turn the University from a centre of critical and independent thought into something quite different and that they are making some progress in the direction they desire." He quoted a passage from a speech made by President Nkrumah, the Chancellor of the University, in 1963, emphasizing the importance of academic freedom, and went on: "It is with sorrow that I record that during this academic year the spirit of the words I have quoted has not prevailed in all the practical relations between the University and the authorities and that, in the transactions to which I have just had to refer, the Constitution of the University was not respected. The safeguards of academic freedom at this University have suffered some diminution during this year."

It remains to be seen whether the warning uttered by Dr. Cruise O'Brien on that occasion will be heeded or whether,

with his departure, a further step will be taken towards the complete domination of the University by the Party and the Government. The loss of academic freedom, of the freedom to teach and to learn to think independently and critically, can only have the most serious consequences for the future of the country, and it is to be hoped that the Government will realize that it is in its own long-term interest to restore and preserve that freedom it was once pledged to uphold.

School education has also been brought under closer control by the Education (Amendment) Act, 1965, which prohibits the establishment and conduct of private educational establishments except with the prior approval of the Minister of Education.

4. *Freedom of Information*

Having established complete control over broadcasting and the Ghanaian press, which has been reduced to the status of a Government and C.P.P. mouthpiece, and having set up a comprehensive system of censorship of news sent abroad by foreign correspondents, in November 1964 the Government turned its attention to other publications, with the establishment of a committee empowered to inspect publications in bookshops and the libraries of schools, colleges and universities.

The Committee of nine persons, chaired by the head of the Philosophy Department of Ghana University, will "work out a system to ensure the removal of all publications which do not reflect the ideology of the party or are antagonistic to its ideals". The practical consequences of a policy of this sort must, of course, depend on the manner in which it is implemented. The most disturbing aspect of such a departure is the power which it gives to the Government, if it thinks fit, to control entirely the reading matter of the population and thus to prevent its citizens from acquiring knowledge or information that it considers undesirable in its own interest.

5. *Habeas Corpus*

By the Habeas Corpus Act, 1964, Ghana reversed the normal rule relating to appeals in habeas corpus applications, namely that while there is an appeal against a refusal of a writ of habeas corpus there is no right to appeal against its grant, by providing that "an appeal shall lie to the Supreme Court against an order

for the release of the person detained as well as against the refusal of such an order”.

Government authorities will thus be able to take to the Supreme Court cases in which a High Court judge has found detention to be illegal and ordered a man's release. Since judges are removable at the will of the President in his absolute discretion, it will be difficult for a Supreme Court Bench, made aware by the very fact of an appeal against the grant of a writ that the Government is determined to detain the person in question, to consider the application with the objectivity and impartiality which alone can adequately protect the individual against arbitrary actions on the part of the State.

6. Preventive Detention

The Government's powers to impose preventive detention have already been analyzed and found wanting by the Commission on three grounds: preventive detention can be imposed at any time and not only during a state of national emergency when alone such sweeping powers may be justified; it can be imposed in the absolute discretion of the President and is subject to no form of review or challenge in the courts; and it can be imposed for as long as five years renewable for a further period of five years. The only protection given to the detainees is the right to make representations in writing to the President.

Nonetheless, it was found desirable to extend these powers even further, and by the Preventive Detention Act of 1964 the President is also empowered to make restriction orders against a Ghanaian if he is of the opinion that preventive detention would not be suitable “on account of age or health or for any other reason”. A restriction order may contain conditions relating to a person's business or employment and his association and communication with others. It thus appears that South Africa's banned persons may be joined by a number of Ghanaians, likewise condemned to a life of half-liberty, subject to constant surveillance and control.

Further, if a person against whom a detention order has been made fails to comply with a notice requiring him to report to a police officer, Section 6 (2) of the Act provides that “he shall be detained during the President's pleasure for a period not exceeding double the period specified in the order” made against

him, i.e. a possible maximum of ten years. If a person against whom a restriction order is made is guilty of a like failure, he commits a criminal offence carrying a punishment of imprisonment for up to five years.

No official statistics have been available relating to the number of persons subject to preventive detention since the requirement to list them in the official Gazette was abolished. A letter dated February 20, 1965, smuggled out of a Ghanaian prison and vouched for as authentic by Dr. K. A. Busia, leader of the Ghana United Party in Exile, who stated that he recognized the handwriting, claimed that there were nearly 600 detainees in the prison in which the writer was detained; in March 1965, Dr. Busia estimated that there were about 1,400 detainees in all, but there is no way of checking these estimates.

The letter referred to above also contained serious allegations of ill-treatment and even torture of political detainees. These allegations were firmly refuted by the Government who announced that it has decided to invite representatives of the leading Ghanaian churches, the Muslim Council and the Red Cross of Ghana to inspect prisons and report on their findings. Nothing further has been heard of this offer, which was made on March 26, 1965, and accompanied by an announcement that the President would grant an amnesty to those detainees whose release would not directly endanger the security of the State. No details of this amnesty are available, though on June 13, 1965, President Nkrumah announced that as an act of clemency and to mark the C.P.P.'s sixteenth anniversary he had ordered the release of 100 detainees.

7. The Re-trial by the Special Court

An account was given in *Bulletin* No. 18 of the procedure adopted for setting aside the acquittal in December 1963 of three out of five defendants charged with treason and conspiracy. Thereafter all five men were kept in prison under the Preventive Detention Act until October 2, 1964, when a second trial on the same charges opened before the Special Criminal Division of the High Court, presided over by the Chief Justice, T. Sarhode Addo (who was appointed after the dismissal of the former Chief Justice who had presided over the Court that acquitted the defendants).

At the outset of the re-trial, four of the five defendants complained that they had been unable to obtain counsel to represent them, while the fifth stated that he had no means to employ a lawyer. The trial proceeded with all five defendants unrepresented, and lasted until February 9, 1965, part of the proceedings being conducted in camera. All five defendants were found guilty and sentenced to death.

Six weeks later President Nkrumah announced that he had decided to commute the sentences to 20 years' imprisonment. Whatever the motives for the re-trial and reprieve, when the same result could have been achieved by the use and renewal of the powers contained in the Preventive Detention Act, the commutation of the death sentences is a humane and welcome gesture. It is a fact to be remembered, when regretting the many steps that have been taken in Ghana away from the ideals embodied in her national motto "Freedom and Justice", that no single execution of a political opponent has been carried out, an example that should be reflected upon by political leaders facing internal dissent both in Africa and elsewhere.

8. Constitutional and Election Law Amendments

The Constitutional Amendment Act, the Presidential Elections Act, and the Electoral Provisions Act were passed in May 1965, shortly before the elections. The first provides that only members of the C.P.P. may stand as candidates for election to the Presidency of the Republic, thus entrenching the de facto position in the Constitution. The second provides for nomination by the C.P.P.—the nomination to be signed by three members and endorsed by its General Secretary (who is President Nkrumah)—of a single candidate for the Presidency. The nomination must then be submitted to the National Assembly for its approval. If the National Assembly fails to approve the nomination, the Act provides that it must be dissolved.

The third Act, in making provision for general and local elections, permits individuals to stand both for the National Assembly and for local Councils as independent candidates. In introducing the Bill, the Minister for Local Government, Mr. Dawuma, said that in spite of this provision in the law he was sure the entire nation adhered to one-party democracy and the ideology of socialism, and the improbability of any indepen-

dent candidate coming forward was confirmed at the subsequent elections.

9. *The General Election*

The general election announced for June 9, 1965 was to be the first since Ghana obtained independence. The last elections to the National Assembly were held in July 1956, when 104 members were elected. Independence was granted in 1957, and in 1960, on the introduction of the Republican Constitution, it was enacted that the existing National Assembly, which had been increased to 114 by the addition of ten women members, should continue to function as the First National Assembly under the new Constitution.

For the purpose of the 1965 election, electoral districts were reviewed and the number of members was increased to 198. On May 28, 1965 the Central Committee of the C.P.P. met to nominate the candidate for the Presidency of the Republic and to approve C.P.P. nominations of parliamentary candidates. In fact, the only nominations for the 198 seats were those of the C.P.P. candidates, and on June 2, 1965 the Government decided that there was no need to hold an election and declared that the candidates nominated by the C.P.P. had been automatically elected.

In circumstances such as these, elections have been reduced to a farce. The choice of members of the National Assembly is, in fact, made by the Central Committee of the C.P.P. when they approve nominations. The powers of the Government to deal with political opponents—and the use made of those powers in the past—are so intimidating that he would be a bold man indeed who came forward to stand as an independent candidate; and if such a man were found, the memory of the methods employed to ensure a massive “Yes” vote at the referendum would scarcely encourage electors to vote for him.

The irony of the present situation in Ghana is that it is quite probable that President Nkrumah and the C.P.P. would command the support of a majority of the electorate, even in genuinely free elections. It is a pity that it is not possible to test this hypothesis.

MEXICO: CONSTITUTIONAL CHANGES IN THE ELECTORAL SYSTEM

Introduction

When one thinks of Latin America and turns one's attention to Mexico, the first association that springs to mind is the great Mexican Social Revolution of 1910. That date is, in fact, the starting point of modern Mexican history, for the vast structural change it caused set the country on a fresh course. At the close of the civil war phase of the Revolution, the ideas and ideals of the people in arms were summed up in an instrument, the 1917 Constitution, one of the most advanced politico-social documents of its day. Deriving its inspiration from its own native sources, the Mexican Revolution, pre-eminently nationalist as it was, established its institutional framework in the 1917 Constitution and subsequently in the actual operation of the political institutions it had created for itself. The present Mexican State is indubitably the result of that revolutionary process and certainly possesses characteristics peculiar to itself. The political stability of the Mexican system for over thirty years is something quite exceptional in Latin American politics and students have sought the underlying reasons for this "political phenomenon".

Discussion of an amendment — and a most original one — to the Mexican Constitution inevitably entails a reference to certain aspects of Mexican constitutional practice if the true scope of the recent changes is to be grasped. The outstanding features of the present Mexican system are a presidential regime, under which the person in whom the executive power is vested has very wide powers and prerogatives, but is absolutely prohibited by the Constitution from seeking re-election, and the existence of a dominant party, the Revolutionary Institutional Party (PRI), which in practice monopolizes the country's whole political life. Ever since the Party, known as the official political

party, was founded in 1929, it has increasingly entrenched itself and has dominated the exercise of political power at every level. Its members are the sole governing figures, all the way up from the local council to the Presidency, and embracing the governors of states, the deputies and senators of the local legislatures, the deputies and senators of the federal legislature, the ministers, the senior civil servants, and so on.

Other political parties besides the official party exist with full legality, but they have never made any impression on the PRI's political supremacy; they simply do not attract enough votes. It is not hard to see why. The governments descended from the Revolution have been wise enough to make good use of their political strength and employ it for the benefit of the people as a whole, by establishing — despite the intractable problems that still have to be faced, — the prerequisites for Mexico's economic, social and cultural progress; an achievement acknowledged at home and abroad.

The Amendments to the Constitution

Concern about the negative effects of an impotent and virtually non-existent Opposition and the existence of what has been called Mexico's "unanimous democracy" (as the universal support given to the PRI has been called) prompted the then President of the Republic, Adolfo Lopez Mateos, to all intents and purposes the head of the official party, to submit to Congress on December 21, 1962, a proposal for considerable amendments and additions to the 1917 Constitution. They involved important modifications in the system of representation enshrined in that Constitution and were designed to bring about a more substantial participation by the opposition parties in the parliamentary life of the country. The President submitted to Congress a proposal for a recasting of article 54 — on the election of deputies — and an addition to article 63, entrusting further responsibilities to the elected deputies and senators and to the political parties.

Article 54 of the 1917 Constitution as it originally read provided that:

"deputies shall be elected by direct suffrage as provided by the Elections Act".

Article 54, as amended, states :

"Deputies shall be elected by direct suffrage in accordance with the conditions laid down in article 52, and, in addition, there shall be elected *party deputies* in strict compliance, in both instances, with the provisions of the Elections Act, and, in the case of the latter, with the following rules :

I. Any national political party which obtains two and one half percent of the total vote cast in the election concerned shall be entitled to the accreditation of five deputies from among its candidates, and to one further deputy, up to a total of twenty, for every one-half percent of the votes cast ;

II. If it obtains a majority in twenty or more electoral districts, it shall not be entitled to have its candidates received as party deputies ; but if fewer of its candidates are elected, it shall be entitled, provided that it gains two and a half percent of the votes as specified above, to have up to twenty deputies accredited, comprising both those directly elected and those elected on a percentage basis ;

III. The latter shall be accredited strictly in accordance with the proportion of votes they have obtained as compared with those for the other candidates of the same party throughout the country ;

IV. Only those national political parties which have been accepted for registration under the Federal Elections Act not less than one year before the date of the election shall be permitted to accredit deputies under the terms of this article ;

V. Majority-vote deputies and party deputies, being representatives of the Nation, as laid down in article 51, shall enjoy equal rank and have the same rights and obligations."

The original text of article 63 of the Constitution read :

"The Chambers may not hold meetings nor perform their functions unless, in the case of the Senate, at least two-thirds of its members, and, in the case of the Chamber of Deputies, at least one-half of its members, are present ; those present in either Chamber shall however meet on the day set by the law and summon those not attending to do so within the thirty days ensuing, with a warning that if they fail to do so they will be deemed by their absence to have vacated their seat. Their alternates shall then be convened and must present themselves within the like time limit, and if they too fail to do so, the seat shall be declared vacant and new elections shall be held.

Any deputy or senator who fails to attend for ten days consecutively without good grounds or without permission from the President of the Chamber of which he is a member, which permission shall be reported to the Chamber concerned, shall be deemed to have renounced attendance until the next session and his alternate shall be convened forthwith.

If there should not be a quorum for the opening of either of the Chambers or for the performance of its functions thereafter,

the alternates shall be summoned forthwith to attend as soon as possible, within the time limit of thirty days referred to above."

The addition to article 63 is as follows :

"Any person who has been elected a deputy or a senator and fails to attend, without good grounds accepted by the Chamber concerned, and to discharge his functions within the time limit laid down in paragraph 1 of this article shall render himself liable to the penalties laid down by the law. Likewise, any national political party which has put forward candidates in an election for deputies or senators and decides that any of its members who was elected shall not attend to perform his functions shall render itself liable to the penalties laid down in the law."

The Union Congress, as the first instance of the organ competent to make constitutional amendments, unanimously approved the Federal Executive's proposed amendments, and this action was endorsed by public opinion. In compliance with the provisions of article 135 of the Constitution, which sets out the procedure for amending the Constitution, the draft amendments and additions were referred to the Legislatures of the States for consideration and voting. After approval by the majority of the State Legislatures, they were incorporated into the Constitution by a decree published in the *Official Gazette* of June 22, 1963.

Scope of Constitutional Amendments

A detailed examination of the amended electoral procedure shows that the greater part of the Chamber of Deputies is still made up by the system of constituency single-list majority voting. There must be one sitting deputy and an alternate for every 200,000 inhabitants or for any fraction of more than 100,000. The deputies thus elected will be those who obtain a majority of the votes in each constituency, and they will be known as "majority" deputies.

Political parties which do not win any seats under the majority-vote system, but obtain 2.5% of the total vote, will be entitled to at least five "party" seats; and one more seat for every additional 0.5% of the vote, up to a fixed ceiling of twenty. If a party wins some, but less than twenty, seats by majority vote, it may bring up its total representation to twenty by adding "party" deputies, and will not have in doing so to subtract the votes of its candidates who obtained a majority in

the constituency voting. Parties which win twenty or more "majority" seats are not entitled to "party" seats; parties which do not obtain at least 2.5% of the total vote nor any constituency seats will not be entitled to any seats at all.

Owing to the peculiar characteristics of the Mexican party system, especially since the appearance of the Party of the Revolution (now the PRI) in 1929, the Chamber of Deputies and the Senate have consisted almost solely of candidates sponsored by this Party, who—it should be noted—do receive majority popular support. The amendments to the Constitution fully recognised that state of affairs.

The fact that the PRI had become the magnetic pole of political life led to a diversion of the normal play of political forces, so that they frequently found expression outside the institutional framework of Congress. This phenomenon led to a distortion of the constitutional system and resulted in a danger that differences of opinion might be debarred from normal expression by public debate in Congress. Although the existence of various shades of opinion within the official party created a framework broad enough to work towards the solution of the nation's problems under stable and effective government and a system that permitted discussion and criticism within the party itself, yet there was a widespread feeling that public debate should become as lively as it had once been, since it was recognized that opposition, if practised responsibly and within legal limits, is an aid to, and a sharer of responsibility with, government.

The constitutional amendments adopted and put into effect for the first time in the federal elections of July 1964¹ are an attempt to reconcile the general principle of the system of majority representation with some elements of proportional representation, or perhaps, more strictly, minority representation. True, a percentage of the total vote—2.5—is taken to decide what parties are to be represented in the Chamber of Deputies under this system, and a percentage—0.5—to determine the number of "party" deputies, from five to a maximum of twenty, inclusive of the "majority" deputies. But obviously the main factor on account of which the system cannot be considered as one of proportional representation in the strict sense is the

¹ The present President of Mexico, Gustavo Diaz Ordaz, was also elected at these elections; he was inaugurated on December 1, 1964.

ceiling for the "party" deputies and the fact that where a party wins twenty or more "majority" seats it cannot avail itself of the minority representation system. For, should all the parties win more than twenty seats each by majority vote, the system would *ipso facto* cease to operate, the majority-vote system only having served to elect the deputies.

To prevent the proliferation of political groups called into being merely in the heat of the elections, the proposed system requires that, in order to be entitled to "party" seats, the groups must have registered as a national political party at least one year before the date of the elections.

One striking feature of the constitutional amendments is that in order to ensure that the principle of popular sovereignty in elections is effective in practice, and the final decision left to the electorate, it is laid down that parties are not permitted to designate the "party" deputies at will, but that those candidates shall be elected who, although failing to obtain a majority, have obtained the highest percentage of votes as compared with other members of the same party. This, according to the President's proposal, is an attempt to prevent the creation of, or at least legal consecration of, privileged castes within the parties composed of those who decide specifically which minority deputies are to be nominated to the "party" seats.

The additions to article 63 explicitly incorporate in the Constitution the obligation to comply with the most elementary duty imposed by popular election: to attend the Chamber and assume office. In the 1961-1964 session, one of the opposition parties, the National Action Party (PAN) ordered its elected deputies not to attend. Some of them obeyed their party's instructions and did not appear in the Chamber of Deputies; those who refused to obey were expelled from the party. The normal working of the constitutional processes is frustrated by this kind of electoral strategy by which the decisions of political parties prevail over the natural obligations of deputies chosen by the electorate. The amendments provide for penalties both for deputies who evade their obligations and for parties which compel them to do so.

It is noteworthy that the amendments apply only to the Chamber of Deputies, not to the Senate. The reason given was that the principle of balance and of equal representation of the States in the Senate — two Senators for each State and two for

the Federal District — being the basis of the Mexican bi-cameral system, would not admit of any such change.

The facilitation of access to Parliament for minority parties, which is the basis of the constitutional amendments which presently apply only to the Federal Chamber of Deputies is, however, something which could and should be extended to the State legislatures, in view of the predominant influence that the provisions of the Federal Constitution have, in Mexico, over the constitutional provisions of the component States.

Another effect of the constitutional amendments was to confer on political parties a formal status in Mexican constitutional law. This does not mean that there was no legal foundation for them under the basic law of the land, since political parties in Mexico had a definite legal status even before the amendments, but there was no express mention of them in the Constitution before these amendments were adopted. The express recognition of the importance of political parties within the constitutional system once again shows the realistic political thinking underlying these amendments.

The changes in the Mexican electoral system will inevitably have repercussions on relations within the parties and between them. Thus, those political parties now in existence — extremely weak though they are as compared with the dominant party — which represent a genuine and appreciable current of opinion in relation to the nation's problems are likely to be strengthened, while those which have not been able to attract any worthwhile following will be doomed to extinction, just as any really lively trends in public opinion that may emerge in the future can be channelled into new legally recognized political parties.

Concluding Remarks

In summing up, there is the additional point to be made that the amendments may be regarded as a felicitous measure in encouraging Mexican political development to keep pace with the country's economic and social progress. The objective is to induce political minorities to share in the responsibilities of government and to channel their activities into political parties while at the same time preventing a proliferation of parties to an extent likely to jeopardize the political stability that has

been the decisive factor in Mexico's economic development or to impair effective government. The amendments, as a member of the PRI has said in Congress, usher in a new phase of the Mexican Revolution, endowed as it already is with experience, with a body of principles and with institutions conducive to the promotion of an organic Opposition, thus strengthening the political parties, undermining the very existence of pressure groups which in practice fulfilled the functions of parties, and stimulating public interest in the exercise of political rights and in the debate between the various political groupings in the country.

It is generally felt that these constitutional amendments are the most thoughtful and far-reaching measures taken in Mexico in relation to its political institutions since the absolute bar on presidential re-election was made effective², for the system they introduce ushers in a new stage in Mexican development which is likely to act as a catalyst with quite unforeseen effects at the various levels of Mexican society. Making access to Congress easier for political minorities is likely to revive parliamentarism and so revitalize political life³. This public debate may quite possibly be so conducted as to strengthen public interest in politics and induce the sceptical to participate more responsibly in the life of the parties and in the social processes.

The new opportunities for opposition criticism of the governing groups should provide a responsible means of control and collaboration in the efficient fulfilment of legislative, administrative and judicial functions. This may enable the Mexican Congress to fit into the modern form of parliamentarism, under which parliament is not limited to purely legislative work but, in the fulfilment of its constitutional powers, becomes a platform for the expression of all shades of public opinion. The Mexican political system engendered by the 1917 Constitution,

² It should be remembered that one of the main slogans of the Mexican Revolution of 1910, which broke out after more than thirty years of the dictatorship of General Porfirio Diaz, was "Effective suffrage, no re-election!"

³ As contrasted with the outgoing Chamber, in which 172 of the 178 seats were held by the PRI and only 6 by the Opposition, in the present Chamber inaugurated in September 1964, of the 210 seats in the Chamber of Deputies 19 are held by the PAN, 9 by the PPS (Popular Socialist Party) and 5 by the PARM — negligible enough figures, but the largest in all modern Mexican political history.

which has demonstrated its characteristic flexibility in adapting itself to the needs of the country's development, now takes on a new perspective. The system has been of great value in furthering the economic, social and cultural aspects of development; but the recent political changes are an implicit acknowledgement of the fact that the achievement of considerable progress in the creation and consolidation of the country's social and economic infrastructure requires the erection of political machinery to keep the institutional structure in balance with the other aspects of the life of society and to accelerate the country's development as a whole, while maintaining the political stability it has experienced for over thirty years.

In conclusion a welcome must be given to the fact that there are countries, such as Mexico, which find that their existing situation is still unsatisfactory and are trying to better their political institutions in an effort to bring them closer into line with the ideal of a State under the rule of law, for which representative government is a prerequisite.

In confirmation of this assertion, reference can appropriately be made to certain of the conclusions reached on representative government by the Conference of Bangkok⁴, held under the auspices of the International Commission of Jurists. It can be stated without any manner of doubt that :

I. The Rule of Law can only reach its highest expression and fullest realization under representative government.

II. By representative government is meant a government deriving its power and authority from the people, which power and authority are exercised through representatives freely chosen and responsible to them.

VI. 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.

⁴ Conclusions of the First Committee on : Basic requirements of representative government in harmony with the rule of law : "The dynamic aspects of the Rule of Law in the modern age", Report of the South-East Asian and Pacific Conference of Jurists, Bangkok, February 1965.

THE LEGAL PROFESSION IN SOUTHERN AFRICA

The International Commission of Jurists has repeatedly stressed the vital contribution that a strong, independent legal profession has to make to the maintenance and strengthening of the Rule of Law. It has consistently taken the view that it is essential that a lawyer should, in theory and in practice, be free to undertake any case no matter how unpopular the cause or the client he has to represent, and that in doing so he should not be subject to any form of restraint, whether direct or indirect. Recent developments in two countries in Southern Africa have given rise to concern that this vital principle is in danger, and that pressure may be brought to bear upon lawyers prepared to act for the defence in cases with a political element by the threat that they will be prohibited from, or restricted in, the continued exercise of their profession.

Rhodesia

The Bar in Rhodesia today is largely white. There are few lawyers who in practice undertake the representation of the hundreds of African nationalists who for some years have been subject to periodic restriction and detention orders. These measures of the Rhodesian Government against their political opponents have been challenged in a number of protracted law suits, some of which were successful. The lawyer principally concerned in the representation of the African nationalists is Mr. Leo Baron, on whom a restriction order was served in May, 1965¹.

S. 50 of the Law and Order (Maintenance) Act 1960, as amended, empowers the Minister of Law and Order to restrict

¹ It is significant that one of the first actions of the Rhodesian Government after its unilateral declaration of independence on November 11 1965 was to take Mr. Baron into detention under a detention order made in accordance with the powers it assumed by its declaration of a state of emergency on November 5 1965.

a person to a specified area for a period of up to five years whenever he considers it desirable to do so "for the purpose of maintaining law and order in any part of the Colony". The order made against Mr. Baron restricts him to an area within a fifteen-mile radius of Bulawayo for a period of twelve months, and is expressed to be "based on a belief that you have actively associated yourself with activities prejudicial to the maintenance of law and order in Rhodesia". The Minister stated in the order that "My belief is founded on information which has been placed before me and which I am unable to divulge because of the confidential nature of the contents and sources of such information." Mr. Baron immediately stated publicly that, since his resignation from Mr. Garfield Todd's Central Africa Party in 1961, he has taken no part in politics and that his connection with the African nationalist movement has been in a purely professional capacity.

The Law and Order (Maintenance) Act does not provide for an appeal against a restriction order. It merely permits a restricted person to make representations in writing to the Minister. In the written representation to the Minister, Mr. Baron said, "I have no idea what information has been placed before you, and it is, therefore, impossible for me to refute it. I say categorically, however, that at no time and in no way have I engaged in any activities such as are alleged, and that any information to the contrary is false". He requested that the evidence against him be submitted to a judicial tribunal, sitting in camera if security interests required it. This request was refused by the Minister, who has persisted in his refusal to give any indication of the nature of the alleged activities on which the restriction order was based, but has stated that they had nothing to do with Mr. Baron's activities as a lawyer.

There are two aspects of the restriction of Mr. Baron that give cause for grave concern. First Mr. Baron has been condemned unheard, with no opportunity either to state his own case or even to know, much less to challenge, the case against him. It is one of the most elementary principles of natural justice, applied not only in strictly legal but also in many administrative proceedings, that each party should have an opportunity to be heard and to know and answer his opponent's case. Mr. Baron — and indeed all those who have been subjected to the Rhodesian Government's wide powers of restriction — has been deprived of that opportunity.

Secondly, the restriction of Mr. Baron has serious implications for the Rule of Law and the legal profession in Rhodesia.

Thus it appears that many of the African nationalists, and others, will no longer be able to have the lawyer of their choice. Many of Mr. Baron's clients are themselves subject to restriction orders and thus unable to travel to Bulawayo to consult him². Others will be unable to retain him in cases involving a court appearance outside the area to which he is restricted unless the Minister gives him a permit to make the journey. The Minister has indicated that, in cases in which Mr. Baron was instructed after the restriction order was made upon him, he will require full reasons for the application in each case before deciding to grant a permit in respect of it; in some cases a permit has been refused and the Minister has stated that he will not issue permits for Mr. Baron to travel to Bechuanaland, where he has a subsidiary office from which he conducted a practice in that territory.

It remains to be seen whether other lawyers will be courageous enough to accept the cases Mr. Baron is no longer able to take, for the implied threat to the independence of the legal profession is perhaps the most alarming aspect of the manner in which Mr. Baron has been restricted in the conduct of his practice.

In the face of Mr. Baron's strong denials of any form of extra-legal activity, of his declared willingness to submit himself to a judicial tribunal, and of the complete absence of any indication of the nature of the activities which are regarded as sufficiently serious to justify the restriction of Mr. Baron, the suspicion inevitably arises that the disfavour in which he finds himself is in some way connected with his readiness to represent the African nationalists whom the Government is committed to suppress, and with the success with which he has on occasion done so. If this suspicion is allowed to take root and grow, the legal profession in Rhodesia will inevitably be placed in an ever more delicate and exposed position, and in time inroads may well be made upon the basic principle of the Rule of Law that is sum-

² Since the state of emergency declared on November 5 1965, the Government can under its emergency powers prevent any restricted person from communicating with persons outside the area to which he is restricted, so that a lawyer can be restrained even from corresponding with his clients and thus in certain circumstances from continuing with the exercise of his profession.

marized in clause IX of the Conclusions of the Fourth Committee of the Delhi Congress of the International Commission of Jurists as follows :

“ if this principle is to become effective, it follows that lawyers must be prepared frequently to defend persons associated with unpopular causes and minority views with which they themselves may be entirely out of sympathy ”.

If the Government has, as it claims, evidence of activities on the part of Mr. Baron unconnected with his professional duties, its consent to submit that evidence to a judicial tribunal, even though security requirements compel it to sit in camera, would do much to alleviate the concern which its apparently arbitrary action has caused ; and the demonstration that its restriction of Mr. Baron's movements was not based upon his professional activities, if such were the outcome of a judicial inquiry, would remove the sense of malaise that must inevitably result from the present uncertainty as to the Government's future reaction to the fearless representation by a Rhodesian lawyer of the cause of those opposed to the Government.

The restriction of Mr. Baron was followed in October 1965 by an order served upon Mr. Eddison Sithole, an African lawyer who was previously an official of the now banned Zimbabwe African National Union, restricting him to a five-mile radius of his home with the result that he cannot continue his practice in three African townships outside his restriction area.

South Africa

One of the most cheering aspects of the reaction of South Africans to the progressive implementation of the Government's policy of apartheid has been the courage and determination with which members of the legal profession have undertaken the defence in the never-ending series of major and minor trials of a political nature, and the knowledge that in the majority of cases, and at least in the more serious ones, the accused would be properly represented by lawyers of integrity prepared to act in unpopular causes ; unpopular, that is, in the eyes of the Government and the majority of the white population.

For the past year, a threat has been hanging over the legal profession in South Africa which, if implemented, will provide the Government with the means of ensuring, if it so wishes, that lawyers who in its view identify themselves too closely with

anti-apartheid tendencies are silenced, with the indirect consequence that opponents of apartheid may in time find themselves unable to secure adequate legal representation because those lawyers who were willing to act for them are barred from practice and those who are not so barred are either unwilling or afraid to do so.

The fears of the South African Bar are succinctly expressed in the following extract from a statement issued by the Cape and Natal Bars soon after the publication of the Bill³: "We believe that the effect of the Bill, if passed into law, may be to inhibit the proper performance by members of the legal profession of their duty fearlessly to present the interests of their clients no matter how unpopular their clients' cause, and no matter how powerful or influential the opposition may be."

The threat is contained in a proposed amendment to the Suppression of Communism Act, 1950, which will if enacted provide that no person shall be admitted to practise as a lawyer unless he proves that he is not a listed Communist or member of an unlawful organisation and has not been convicted of an offence under S. 11 of the Suppression of Communism Act 1950. The proposed amendment also makes provision for the removal from the roll of advocates of any listed Communists or persons convicted of an offence under S. 11 of the Act.

It is not necessary to cite in full the definition of "Communism" and "Communist" contained in the 1950 Act⁴; they are sufficiently wide to include any person who advocates or encourages any form of action, aimed at bringing about a change in the political and economic system of South Africa, which might involve a breach of the extremely wide ranging laws of that country. A Communist further includes "a person who has at any time . . . professed to be a Communist" and "a person who, after having been given a reasonable opportunity of making such representations as he may consider necessary, is deemed by the State President . . . to be a Communist."

The listing of a person as a Communist or member of an unlawful organization is an administrative act to which objection can be made administratively and is not subject to challenge in the courts. The comment of the Natal and Cape Bars, in their statement referred to above, is worth quoting: "The effect

³ Reported in *Cape Argus*, June 9, 1965.

⁴ They are reproduced in "*South Africa and the Rule of Law*" published by the International Commission of Jurists, 1960, at pages 50 and 51.

of the Bill is that the mere appearance on the list of members of one of the organizations affected is a matter obliging the court to refuse admission to, or to strike off, the person concerned. Whether or not the name appears on the list is a matter decided by the Minister. The courts have no right to inquire into whether the name ought properly to be on the list, and they have no discretion to admit the person or to refuse to strike him off if his name is on the list. Although, no doubt, inquiries are made by the Minister in deciding whether or not a name ought to be on the list, those inquiries are not of the same nature as an investigation by the court would be."

"Communists" listed under these powers include persons — some of them members of other political parties, such as the Liberal Party — who could not possibly be considered to be Communists in any sense of the term as it is understood outside South Africa, such as Professor Edward Roux who was a member of the Communist Party for a short period but left it in 1936 and subsequently became a member of the Liberal Party and outspoken anti-Communist.

Offences under S. 11 of the Suppression of Communism Act 1950, conviction of which will, if the amendment is passed, automatically disqualify a person for legal practice, are all offences against the system introduced for the suppression of "Communism". They include acts calculated to further the achievement of any of the "objects of Communism", the advocacy, defence or encouragement of such objects, and the printing, publication or dissemination of a publication that has been prohibited because it is deemed to advocate Communism. A person speaking at, or merely attending, a meeting of an unlawful organization, and even a person who allows his premises to be used to hold such a meeting, is guilty of an offence.

It was in January 1965 that the Government expressed its intention to introduce legislation to the effect outlined above during the 1965 Parliamentary Session. However the Bill was not published until June 5, 1965, some ten days before Parliament was due to rise. The protests aroused by the provision and others published at the same time were so vociferous that the Government, in face of the opposition United Party's declared intention to fight it through every stage in Parliament, did not persist in pushing this particular proposal through in the

last few days of the Session. However, the Minister of Justice stated that it was a matter of principle with the Government, and that it would be proceeded with at the earliest possible moment. The next Parliamentary session begins in January 1966.

The danger involved in the proposal of the Government is that it in effect gives the Government power to ban a person from practice as an advocate if it considers that he represents views opposed to its policies. It makes an advocate's right to practise his profession subject to the Government's tolerance of his political opinions. It is not even necessary, for the ban to come into force, that an advocate should have allowed his political views to influence his professional conduct. It will be possible to disbar him on the grounds of his political beliefs even if they in no way affect his professional conduct or integrity.

The listing as "Communists" of those lawyers who consistently act for the defence in prosecutions brought under the laws designed to stamp out opposition to apartheid — and this is the sort of action which the Government may well be expected to take if the Bill becomes law — will almost inevitably lead to a shortage of lawyers available to appear in such cases, and indeed constitute a grave inroad on the independence of the legal profession by reason of the threat that must constantly be present to the mind of a lawyer asked to act in cases of this nature. It was for this reason that strong protests were made by representatives of the South African legal profession both at the time the proposal was originally put forward and when the Bill was published.

It is of course necessary that there should be power to control admission to practice, and to remove from practice, those who have shown themselves to be unsuitable. The high standards required of members of the legal profession make this essential. But in order to ensure that lawyers maintain that independence without which they cannot play their full part in maintaining the Rule of Law, that power should not be in the hands of the Executive. The standard which the International Commission of Jurists regards as necessary is set out in clause IX of the Conclusions of the International Congress of Jurists, held at Rio in 1962, in the following terms :

"The Rule of Law requires an authority which has the power to, and does in fact, exact proper standards for admission to the legal profession and enforces discipline in cases of failure to abide by a

high standard of ethics. Those functions are best performed by self-governing democratically organized lawyers' associations, but in the absence of such associations the Judiciary should act instead. *Discipline for violations of ethics must be administered in substantially the same manner as courts administer justice*".

South African law so far has respected the principles embodied in that conclusion. Discipline within the profession is ensured immediately by the professional associations, and ultimately by the Court which alone can admit and disbar a member of the legal profession on application by a representative body of the legal profession, inter alia "if the Court is satisfied that he is not a fit and proper person to continue to practise as an advocate"⁵.

The procedure adopted for disbarment under the present system is illustrated by the case of Abram Fischer, Q.C., a prominent advocate and admitted Communist who was charged jointly with a number of others with offences against the Suppression of Communism Act and released on bail. On January 25, 1965, when the trial was in progress, he estreated bail and went into hiding. After considering the matter, the Johannesburg Bar Council applied to the Supreme Court to exercise its power to remove Mr. Fischer from the roll of advocates on the ground that he was guilty of conduct unbecoming an advocate in failing to surrender to his bail. The application, which was opposed by counsel appearing on behalf of Mr. Fischer, was granted on November 2, 1965.

As this case illustrates, the legal profession can be trusted to act for itself when one of its members is guilty of conduct which it considers is inconsistent with his continued membership of the profession; and the entrusting of the final decision to the judiciary is sufficient to ensure that the interests both of the legal profession and of the public it exists to serve will be adequately safeguarded in each case. There are no good grounds on which the Executive can be granted the power to exclude a certain category of persons, defined by reference to their political beliefs, from legal practice, more especially when that power extends to the virtually arbitrary inclusion within the prohibited category of any person the Government deems a potential danger to itself.

⁵ Admission of Advocates Act, 1964, s. 7.

ICJ NEWS

SECRETARIAT

EXECUTIVE COMMITTEE

The Executive Committee of the ICJ met in *Geneva* on October 23 and 24, 1965. It devoted most of its time to the programme of activities planned for the Commission in 1966. One of the projects agreed upon was the organisation of an African regional conference which is likely to be held at the end of 1966.

COMMISSION OF INQUIRY

The Commission of Inquiry constituted by the ICJ to examine the balance between the races in the public services in British Guiana and to make recommendations with a view to eliminating imbalance based on racial discrimination sat in *Georgetown*, the capital of British Guiana, from August 5-22, 1965. The Report of the Commission was transmitted to the Government of British Guiana and published on October 21, 1965.

SPECIAL REPORT ON ANGOLA

The ICJ is at present carrying out an examination of the situation in *Angola*, which will form the subject of a special report. For some considerable time, the ICJ has been closely following the evolution of this problem, which has become of increasingly more immediate importance. The purpose of the current examination is to make a strictly objective assessment of the present position and, by eliminating all the emotional elements which confuse the issue, to arrive at an impartial and realistic basis on which a constructive solution might be built. The ICJ entrusted the preliminary inquiries into the situation to independent individuals, who gathered their information both from Government and opposition sources.

INTERNATIONAL CO-OPERATION

COMMONWEALTH AND EMPIRE LAW CONFERENCE

The Secretary-General, Mr. Seán MacBride, took part in the *Third Commonwealth and Empire Law Conference* held in *Sydney, Australia*, from August 25 to September 1, 1965, which was attended by more

than 3,000 lawyers from the countries of the Commonwealth. An entire session of the Conference was devoted to the ICJ and its activities, which were frequently referred to throughout the Conference, particular reference being made to the Conclusions of the Conference of Bangkok.

The possible creation of a Supreme Court for the Commonwealth, in the form either of a Court of Appeal or of a Court of Human Rights, was one of the principal subjects discussed at the Conference. Mr. MacBride supported the proposal, emphasising that a tribunal of this nature would be a link which would strengthen the cohesion of the Commonwealth as well as an extremely valuable institution in upholding respect for the Rule of Law. As a first step in this direction, he proposed the creation of a Commonwealth Commission of Jurists, which should be asked to examine the best ways of securing the uniform application of the principles of the Rule of Law and the co-ordination of the legal systems within the Commonwealth, and to report to the new Commonwealth Secretariat. This proposal was received with very great interest.

DAG HAMMERKJOLD SEMINAR

On September 23, the Secretary-General, Mr. MacBride, represented the ICJ at the Seminar organised by the *Dag Hammarskjöld Foundation* at *The Hague, Netherlands*, for high-ranking African civil servants and judges.

INTERNATIONAL CO-OPERATION YEAR

The Secretary-General took part in a "Teach-In" on the United Nations Organisation which was held in *London* on October 25 and formed part of the programme of activities organised by the *British Committee for International Co-operation Year, 1965* having been designated as such by the United Nations. Owing to the absence abroad of the Prime Minister of the United Kingdom, the Secretary of State for Foreign Affairs, Mr. Michael Stewart, presided at the meeting which had a considerable success.

COUNCIL OF EUROPE

At the invitation of the Secretary-General of the Council of Europe, the Secretary-General, Mr. MacBride, attended the official opening of the *Human Rights Building*, which will house the staff of the European Court and Commission of Human Rights, in *Strasbourg, France*, on September 28. This is the first time, not only in Europe but anywhere in the world, that a building of this nature has been constructed to serve both as a collective witness to the recognition of the rights and liberties of the individual and as an instrument to assure their observance and protection.

In addition, the Executive Secretary, Dr. V. M. Kabes, took part

in a Seminar organised in *Strasbourg* by the Council of Europe and the Institut des Hautes Etudes d'Outre-Mer for the benefit of African students destined for the Bench and the Bar. The participants came primarily from French-speaking African countries, and Dr. Kabes addressed them on the administration of justice in the African Common Law countries.

CONGRESS OF CATHOLIC JURISTS

The Executive Secretary represented the International Commission of Jurists at the *Fifth International Congress of Catholic Jurists* organised in *Salamanca, Spain*, from September 8 to 12, 1965, by the movement *Pax Romana*, at which representatives of 20 countries discussed the subject, "The Law and Religious Freedom". In his address, Dr. Kabes drew attention to the work already done by the ICJ in this field and in particular to the Conclusions of the Congresses and Conferences of New Delhi, Lagos, Rio and Bangkok on this subject, which "projected a philosophy of tolerance and understanding within the framework of daily practice". He welcomed the steps taken by the Catholic jurists towards the definition of the legal bases of religious freedom and the formulation of the conditions for its application within the framework of the political institutions of a modern state. He also supported the draft convention on the elimination of all forms of religious discrimination and the protection of minorities. The Congress concluded by passing a resolution recognising religious freedom, public and private. This resolution was adopted unanimously by the national delegations, in spite of the individual opposition of a number of Spanish jurists.

INTERNATIONAL COLLOQUIUM ON THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Secretary-General and Dr. J. Tóth, of the ICJ Legal Staff, represented the ICJ at the Second International Colloquium on the European Convention for the Protection of Human Rights and Fundamental Freedoms which was held in *Vienna, Austria*, from October 18 to 20, 1965, under the auspices of the Council of Europe, the Austrian Government and the University of Vienna.

INTERNATIONAL UNIVERSITY FORUM

Dr. H. Cuadra, of the ICJ Legal Staff, attended the *Italo-Ibero-American University Forum* organised from August 25 to 29 at Sondrio, in the Province of Milan, Italy, by the Unión Internacional de Casas de la Juventud and the Institute of Hispanic Culture in collaboration with the European Service for Latin-American graduates. The great majority of the participants were graduates in law and political science from Italy, Spain and nine Latin-American countries (Argentina, Bolivia, Costa Rica, Cuba, Guatemala, Mexico, Peru, Puerto Rico and Vene-

zuela). Discussion was centred on the following subjects: "The University in face of the problems of the world today: its responsibility and its scope for action"; and "The graduates of Latin America and Europe and the utilisation of the experience gained by them in Europe in the interest of the needs of their respective countries".

WORLD PEACE BUREAU

Mr. L. G. Weeramantry, the Senior Legal Officer, represented the ICJ at the International Congress of the *World Peace Bureau*, held at *Vevey, Switzerland*, from August 29 to September 2, 1965. The subject-matter of the Congress was "Requirements for a World at Peace". In the course of the discussion on apartheid, Mr. Weeramantry drew the attention of the participants to the work of the ICJ in this field. Among the principal speakers were Lord Chalfont, British Minister for Disarmament, and Professor Hans Thirring, head of the Department of Theoretical Physics of the University of Vienna, who spoke respectively on "Prospects for Disarmament" and "Disarmament and Collective Security".

NATIONAL SECTIONS

GERMANY

The Secretary-General, Mr. Seán MacBride, and the Executive Secretary, Dr. V. M. Kabes, represented the ICJ at the meeting held on the occasion of the tenth anniversary of the *German National Section*, which was held at Baden-Baden on October 30 and 31, 1965.

During the meeting Dr. Kabes delivered an important paper on the philosophy of the Commission, presented in its historical context, which both traced the unbroken line of its evolution from the beginnings of the ICJ down to the present time and indicated the broad perspectives of its future development.

AUSTRALIA

The Secretary-General presided over the first seminar of the ICJ in *New Guinea* which was organised by the *Australian National Section* and the *New Guinea Local Section*, and which was held at *Port Moresby* from September 7 to 10, and which brought together about 250 participants. The subject-matter of the seminar was "The Rule of Law in a Developing Country".

Before his departure from Australia for New Guinea, Mr. MacBride gave a lecture at the University of Canberra which was arranged by the *Canberra Local Section*.

CEYLON

As a follow-up to the Bangkok Conference, the *Ceylon National Section* is organising a *Rule of Law Colloquium* which will be held in *Colombo* from January 9 to 16, 1966. Participants from several Asian countries and a number of observers are expected to attend. The work of the colloquium will be divided between three committees which will discuss the following subjects: "Introduction of the Rule of Law to the Common Man", for which the rapporteur will be Mr. L. W. Athulathmudali, Lecturer in Law at the University of Ceylon; "Nationalisation of Property and the Rule of Law", for which the rapporteur will be Mr. C. F. Amerasinghe, Lecturer in Law at the University of Ceylon; and "The Ombudsman, as a reality in this Region", for which the rapporteur will be the Hon. Dr. H. W. Tambiah, a judge of the Supreme Court of Ceylon.

A special committee to consider ways and means of giving effect to the United Nations programme for the celebration of the International Year of Human Rights in 1968 will also be set up at the beginning of the colloquium.

NEW NATIONAL SECTIONS

Two new national sections have been established in Africa; one in the Congo (Léopoldville) and the other in Kenya.

The *Congolese National Section* of the ICJ has as its Chairman Judge Pierre-Raymond Tshilenge; its Executive Committee consists of Messrs. Emile Jabon, advocate, Vice-Chairman; Gérard Sakombi, assistant prosecutor, Vice-Chairman; Alexandre de Souza, advocate, Secretary-General; Augustin Kayemba, LL.B., Assistant Secretary-General; Jacques Tshifunda, judge, Treasurer; and Alexandre Mahamba, former Minister of Health, Assistant Treasurer.

The *Section Kenya Justice* has as its Chairman Mr. Kai Bechgaard, Q.C., and the other members of the Executive Committee are Mr. J. A. Coudrey, Secretary; Sheikh Mohammed Amin; Sheikh Mohammed Akram, and Mr. A. J. Kariuki.

In the Far East, a local branch of *Justice*, the British National Section, has been established in *Hong-Kong*. The Secretary-General, Mr. MacBride, took the chair at its first working session on August 23, 1965.

Finally, as a result of the Secretary-General's visit to *Japan* from August 18 to 22, an organising committee is to be set up in *Tokyo* with a view to the establishment of a future Japanese national section.

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Journal of the International Commission of Jurists

Volume VI, No. 1 (Summer 1965): Legal Aspects of Civil Rights in the United States and the Civil Rights Act of 1964 (Part III); Outline of Modern Soviet Criminal Law; Recent Retrospective Legislation in Ceylon; Post-Constitutional Development of « People's Justice » in China; The Central American Draft Convention on Human Rights and the Central American Court. Document: The Central American Draft Convention Compared.

Bulletin of the International Commission of Jurists

Number 23 (August 1965): Edward S. Kozera; Aspects of the Rule of Law: Afghanistan, Chile, Rumania, Soviet Union, Spain, Tanzania; ICJ News.

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