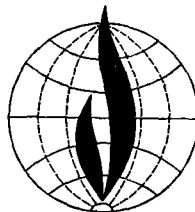


# THE REVIEW



## INTERNATIONAL COMMISSION OF JURISTS

### HUMAN RIGHTS IN THE WORLD

South America	1	Syria	12
Iran	2	South Africa	17
Palestine	9	Uruguay	23

---

### COMMENTARIES

Commission on Human Rights	29
----------------------------	----

---

### ARTICLES

Afghanistan and the Rule of Law <i>A.G. Noorani</i>	37
The Trial of the Turkiye Emerkci Partisi (Turkish Workers' Party) Before the Constitutional Court of Turkey <i>Manfred Simon</i>	53

---

### BASIC TEXTS

UN Code of Conduct for Law Enforcement Officials	65
--	----

---

No 24

June 1980

Editor: Niall MacDermot

## ASSOCIATES OF THE INTERNATIONAL COMMISSION OF JURISTS

The International Commission of Jurists is a non-governmental organisation devoted to promoting throughout the world the understanding and observance of the Rule of Law and the legal protection of human rights.

Its headquarters is in Geneva, Switzerland. It has national sections and affiliated legal organisations in over 60 countries. It enjoys consultative status with the United Nations Economic and Social Council, UNESCO and the Council of Europe.

Its activities include the publication of its Review; organising congresses, conferences and seminars; conducting studies or inquiries into particular situations or subjects concerning the Rule of Law and publishing reports upon them; sending international observers to trials of major significance; intervening with governments or issuing press statements concerning violations of the Rule of Law; sponsoring proposals within the United Nations and other international organisations for improved procedures and conventions for the protection of human rights.

If you are in sympathy with the objectives and work of the International Commission of Jurists, you are invited to help their furtherance by becoming an Associate. Associates, who may be either individual or corporate persons, are of three categories:

Patrons, contributing annually	Swiss Fr. 1,000
Sponsors, contributing annually	Swiss Fr. 500
Contributors, contributing annually	Swiss Fr. 100

Associates will receive by airmail copies of all ICJ publications, including the Review, ICJ Newsletter, Bulletin of the Centre for the Independence of Judges and Lawyers and special reports and studies by the Secretariat.

You are invited to write to the Secretary-General of the International Commission of Jurists, P.O. Box 120, CH-1224 Chêne-Bougeries/Geneva, Switzerland.

### SUBSCRIBERS

Alternatively, you are invited to become a subscriber to the REVIEW.

Annual Subscription Rates:

By Surface Mail	Sw. Fr. 12.50
By Air Mail	Sw. Fr. 17.50
Special Rate for Law Students	Sw. Fr. 9.00

*Note:* Payment may be made in Swiss Francs or in the equivalent amount in other currencies either by direct cheque valid for external payment or through a bank to Société de Banque Suisse, Geneva, account No. 142.548, National Westminster Bank, 63 Piccadilly, London W1V OAJ, account No. 11762837, or Swiss Bank Corporation, 4 World Trade Center, New York, N.Y. 10048, account No. 0-452-709727-00. Pro-forma invoices will be supplied on request to persons in countries with exchange control restrictions to assist in obtaining authorization.

# *Human Rights in the World*

## *South America*

### *Security Authorities Collaboration*

The International Commission of Jurists has received some remarkable direct testimony of the illegal collaboration between the security forces of the repressive regimes of the 'south cone' of South America, collaboration which frequently leads to the 'disappearance' of suspects in their custody. It is a statement by Dr. Amilcar Santucho, an Argentinian advocate and a member of the Argentinian League for Human Rights, now living in Sweden.

Dr. Santucho left Buenos Aires in May 1975 owing to the increasing persecution of lawyers who defended political prisoners and the threats to his life by the notorious Argentinian Anti-Communist Alliance. An additional reason for these threats may have been the fact that his brother, Mario Roberto Santucho, was the leader of the People's Revolutionary Army, activities in which Dr. Santucho took no part.

He went to Paraguay on his way to Peru. Upon entering Paraguay he was arrested by the Paraguayan police. Although the government claimed shortly after his arrest that he was arrested because he had entered Paraguay with inadequate travelling papers, they later claimed he was in detention under the state of siege decree because they had discovered evidence proving that he had entered the country with the intention of carrying out subversive activities

which would threaten the security of the State. Nevertheless, he was never charged or brought to trial for any offence.

Following world-wide representations on his behalf organised by the Centre for the Independence of Judges and Lawyers of the ICJ, as well as representations by other organisations, Dr. Santucho was eventually released in 1979. On a visit to the ICJ in Geneva, to express his thanks, he gave the following statement concerning his torture and interrogation by Paraguayan, Argentinian, Chilean and Uruguayan police and military officers:

"I was detained in May 1975 and imprisoned until my release in September 1979. I was never charged with any crimes nor brought before a court. I was detained when I was passing through Paraguay on my way to Peru. I had no links or connections in Paraguay. This was to me a foreign country.

"During my detention I was interrogated and tortured first by Argentinian and Paraguayan police, and later successively by Argentinian, Chilean and Uruguayan military officers. Questioning revolved almost exclusively on facts that interested the Argentinian security forces, namely the whereabouts of Mario Roberto Santucho, head of the People's Revolutionary Army; where this organisation's moneys were kept; the

location of its military indoctrination school; the whereabouts of my relatives; and other matters related to the revolutionary activities of my brother Mario Roberto Santucho.

"The Chilean military officers drugged me during their turn at interrogation, which was carried out by Col. Zeballos, then head of the Information Services of the Chilean Air Force, and by an officer named Oteiza, allegedly a psychiatrist. They probably exceeded the doses of the drugs since I was unconscious from Wednesday night until Sunday morning. Oteiza came to my cell the following Monday trying to persuade me to cooperate with them in order to ne-

gotiate my release.

"A few days later, Zeballos returned to Chile taking with him Jorge Fuentes Alarcón, a Chilean who had been detained in the Investigations Division (Political Police). His past and present whereabouts are unknown and the Chilean Government denies that it is holding him."

These events are clear evidence of unlawful collaboration between the Argentinian, Chilean, Paraguayan and Uruguayan re-times, a collaboration which has resulted in countless killings of nationals of the four countries who have been clandestinely delivered to security forces and then became "disappeared" persons.

## *Iran*

### *The New Constitution*

#### *Introduction*

The Iranian revolution and its Islamic constitution cannot be understood outside the context of the teachings of Islam and the background and development of what is conveniently called "militant Islam"<sup>1</sup>.

Islam, neglected for a long time in the West, has recently become the concern of politicians and scholars in all parts of the world. The vigour of the Islamic revival has surprised many who tended to look upon Islam as a static, feudal religion, out of touch with the progress of modern science and knowledge. There are about 750 mil-

lion moslems in the world today, in over 70 countries. Islam (literally "submission", implied to God), is a religion concerned not only with the private life of man, but, in the words of a leading Islamic writer, "it is a complete way of life, catering for all fields of human existence... individual and social, material and moral, economic and political, legal and cultural, national and international"<sup>2</sup>.

Islamic law is an integral part of the Islamic faith. The sources of Islamic law are, in descending order of importance, the Koran, which is the word of God revealed to the Prophet and in itself divine, the Sun-

1) See, e.g., a recent comprehensive study by G.H. Hansen, "Militant Islam", Pan Books, London, 1979.

2) Khurshid Ahmad, "Islam, Its Meaning and Message", Islamic Council of Europe, London, 1976, p. 37.

nah, which is the body of traditions based on the acts and sayings of the Prophet, *ijma* or consensus of the community (later understood as that of the scholars) and *ijtihad* or independent judgement. The "traditions" of the "four right-guided caliphs" (the first four rulers to succeed Muhammad from 632–661 A.D.) form another but less authoritative source of legal precedent. Early codifications of and commentaries on the sources split into four great schools of law which coincide with geographical areas. By the middle of the tenth century all the components of that total legal entity known as the Sharia law were established and consolidated.

Islam being a religion of laws, the men who are learned in religious doctrine are usually those who are learned in legal doctrine. In the absence of a Church or an institutionalised priesthood in Islam, these religious lawyers or ulema often become leaders of their community. They are the closest equivalent to clergy in Islam.

Very early in its history Islam split into two major sects: Shiah and Sunni. The fact that the majority of Iranians are Shiah moslems is essential to a proper understanding of the Iranian revolution and the constitution, because as G.H. Jansen in "Militant Islam" explains:

"The core of the Shiah faith is that the earthly community should be led by a charismatic, semi-divine leader, the imam, who acts as the mediator between the human and divine, while the Sunni belief is that the individual believer stands directly face to face with God, with no need for an intercessor. Shiism became a separate politico-religious entity when in 1502 it was declared the official religion of the new Persian state being established by Shah Ismail.

The doctrinal differences between Sunni and Shiah Islam are these: the Shiah, of course, do accept Muhammad and the Koran, but while the sources of Sunni law are

the Koran, the Hadith of the Prophet, the consensus of the community and 'analogy', the four bases of Shiah law are the Koran, the Hadith of the Prophet and the imams, the consensus of the imams and 'reason'. So the Shiahs have their own collection of Hadith and their own school of law, the Jaafari."

The concept of an Islamic state is nothing new. Many countries with a Moslem majority have proclaimed themselves in various degrees to be Islamic states, some by providing that the head of state must be a moslem, some that Islam is the state religion, others that the Sharia is a source of law, still others that the Sharie is the source of law. While some modern writers reject the whole concept of the Islamic state as "an obsession for political power for which Islam is being cynically exploited" (A.G. Noorani, *The Indian Express*, 1 Nov. 1979), others, like Ayatollah Khomeini believe that "since Islamic government is a government of law it is the religious expert (faghih) and no one else who should occupy himself with the affairs of the government". It is clear that there is no unanimity on what is an Islamic state. While most Islamic scholars agree that in an Islamic state government must be by popular participation, that the judiciary must be independent and that the legal system must be based on the Sharia, on other points there is much disagreement.

With this short and inadequate introduction, a description follows of the basic provisions of the constitution of the Islamic Republic of Iran and the procedures by which it was agreed and brought into force.

### *Drafting and Acceptance of the Constitution*

A first draft of the constitution was published on 21 February 1979 for discus-

sion by the public. Shortly afterwards on 30–31 March 1979 a referendum was held on the replacement of the monarchy by an Islamic republic. On the basis of the result of the referendum, officially announced to be 99% in favour, Ayatollah Khomeini proclaimed on 1 April the Islamic Republic of Iran.

Elections for a constituent council of 73 members to discuss the draft constitution, officially published on 18 June, were held on 3 August 1979. Several parties, including the National Democratic Front (NDF), the National Front (NF), the Moslem People's Republic Party (MPRP) and certain Arab and Kurdish political groups called for a boycott on the grounds that the proposed council would be unrepresentative as there was no possibility of free campaigning and fair elections in the current atmosphere of disturbances and civil war. Opposition groups alleged several irregularities. The results, announced on 11 August, showed that at least 60 of the 73 seats on the council had gone to religious leaders and other Islamic fundamentalists.

The council deliberated on the constitution from the end of August until November. On 2–3 December a referendum was held on the constitution, which was adopted with 15,680,329 votes in favour and 78,516 against. Although there were no official figures on the level of participation, according to observers approximately 65% of the electorate voted. In particular the referendum was reported to have been widely boycotted in the minority regions of Kurdistan, Baluchistan and Azerbaijan – where the majority of the moslem population belong to the Sunni sect – because of the lack of autonomy and the dominance given to the Shiah under the constitution. In an effort to ease the tension Ayatollah Khomeini announced some minor changes giving more latitude to national religious minorities.

With the help of the Iranian mission in Geneva an unofficial English translation of the constitution has been obtained.

### *Preamble of the Constitution*

The constitution begins with a long and unusual introduction full of strident language stressing the importance of the events leading to the revolution and underscoring the impact of fundamentalist Islamic theory on the constitution. The subtitles are indicative: Vanguard of the Movement; Islamic Government; Anger of the Nation; Price Paid by the Nation; Method of Government in Islam; Supervision by the Faghih(s); Economics Is a Means to an End Rather Than the End Itself; Status of Women; Army; Judiciary; Executive; Mass Media; Representatives.

Significantly, the main body of the Constitution consists of 175 principles, and not articles.

### *General Principles*

Principle 1 declares that Iran is an Islamic republic "under the leadership of Ayatollah Imam Khomeini". The principles which follow expand on the concept of an Islamic state. Moral virtue is stressed and a duty is placed on citizens and governments alike to "refrain from what is bad and to adhere to what is wholesome" (prin. 8). All laws must be based on "Islamic principles" (prin. 4), and the official religion is Shi'ite Islam (Jafari Asna Ashari). Shiah influence is also evident in the emphasis placed on the role of the imamat or religious leadership (prins. 2(5) and 5), which is perhaps the most significant change to the original draft constitution.

## Government

Principle 57 states that the three sovereign powers in the republic are the legislature, the executive and the judiciary, each being independent (although later principles qualify the independence) and linked by the office of the President, and all being under the supervision of the imamat or leader. In addition to the leader, the other important organ which seeks to guide the republic on Islamic principles is the Guardian Council, in effect a second chamber of the legislature.

Each of these bodies is discussed in greater detail below.

### *The Leader or Council of Leadership* (prins. 107–112)

Principle 5, framed in terms of the Shi'ite faith, firmly establishes that:

*In the absence of Hazrat Vali-e-Asr, Imam Mehdi, the leadership of the community will fall upon the Faghih who is just, pious, informed, brave, enterprising and respected by the majority of the people as their undisputed leader. If no such person can be found, the leadership of the community will be in the hands of a Council of Leadership consisting of qualified Faghihs.*

Principles 107–112 elaborate on this, explaining that Ayatollah Khomeini has been accepted by the people as the leader. Where there is no such clear popular choice, an assembly of experts shall be elected to choose a leader or failing that a council of leadership. The same assembly shall have the power to dismiss a leader who lacks the proper qualifications or is unable to carry out his duties.

The powers and duties of the leader are outlined in principle 110. The leader has

no direct authority over the National Assembly but indirectly controls legislation through his appointment of six religious lawyers on the Guardian Council, the second chamber which vets all legislation passed by the National Assembly. As regards the executive, the leader may dismiss the President, after the decision has been ratified by the supreme court, or upon disapproval by the National Assembly (although the Executive is stated to be independent from the legislature: prin. 57). The leader also has important powers with regard to the judiciary. He appoints the head of the supreme court and the prosecutor general in consultation with the judges of the supreme court. The leader is the supreme commander of the armed forces.

### *The Executive* (prins. 113–142)

The President is the chief executive and the highest authority in the country next to the leader (prin. 113). The President must be a Shi'ite moslem and an Iranian. He is directly elected but can be dismissed by the leader, as noted above. The President has the responsibility for implementing the constitution, for defence and other matters "which do not relate directly to the leader" (prin. 113). From the reading of principles 115–142 it would appear that most of the presidential functions are ceremonial, with the important exception of the nomination of a prime minister which must be endorsed by the National Assembly. However, the activities of the first President, Dr. Bani Sadr, and his special relationship with the leader may have set a constitutional precedent for a stronger role.

Ministers, who are chosen by the prime minister, must enjoy the confidence of the National Assembly. They bear individual and collective responsibility to the Na-

tional Assembly for the actions of the government.

### *The National Assembly* (prins. 71–90)

The National Assembly consists of 270 members who are directly elected and sit for four years. The primary function of the National Assembly is to make laws within the limits of the Constitution and the official religion (prin. 72), these limitations being determined by the Guardian Council. The National Assembly is prohibited from setting up a military government, from making laws which would substantially alter the boundaries, or would grant concessions to foreigners in agriculture, mining or industry.

In addition to law-making, "the interpretation of ordinary laws is within the competence and jurisdiction of the National Assembly" (prin. 73). The same principle adds that this does not invalidate the interpretation of laws by the judiciary, a somewhat vague provision which leaves unresolved the question of whose views prevail in case of conflict.

Another important function of the National Assembly is the investigation and scrutiny of "all affairs of state" (prin. 76). The government may not enter into treaties, employ foreign nationals or transfer ownership of government property without the approval of the National Assembly. Although the executive is stated to be independent from the legislature (prin. 57), the Assembly can pass a vote of no confidence on a minister who must then be removed.

The National Assembly has the power to investigate all complaints from the general public about the Assembly itself, the executive or the judiciary (prin. 90). It is not stated what measures, if any, the As-

sembly can take against the organs if a complaint is well-founded.

### *The Guardian Council* (prins. 91–99)

The Guardian Council consists of twelve members, six of whom are religious lawyers appointed by the leader, the other six being secular "Islamic" lawyers appointed by the National Assembly on the recommendation of the High Judicial Council.

The primary function of the Guardian Council is to examine all legislation passed by the National Assembly in order to ensure that it is in conformity with Islamic precepts and the principles of the constitution. The interpretation of the Islamic precepts is the responsibility of the religious lawyers but constitutional review is the task of the council as a whole.

The Guardian Council is also responsible for supervising elections and referendums (prin. 99) and drawing up the law for the assembly of experts who choose the leader(s).

### *The Judiciary* (prins. 156–174)

Principle 157 sets up a High Judicial Council, consisting of the head of the supreme court, the prosecutor general and three judges elected by their peers, which has the power to set up the legal structure, prepare legal regulations according to Islamic principles and recruit other judges. Judges are only dismissable after their "guilt" has been established by means of a fair trial.

The minister of justice is the link between the executive, legislature and the judiciary. He is appointed by the prime minister from among individuals recommended by the High Judicial Council.



Principle 170 places an obligation on judges to refrain from implementing and upholding laws which contravene Islamic principles, thus adding to the conflict of authority between the National Assembly, the judiciary and the Guardian Council in the area of interpretation of laws.

Other principles in this section on the judiciary state that trials must be open unless against the public interest or requested by the parties to a dispute (prin. 65), retroactive criminal laws are prohibited (prin. 169), press and political offences are triable before a jury (prin. 168), military courts are an integral part of the legal system but civil offences by military personnel shall be tried before the ordinary courts.

### *Human Rights*

The rights of individuals are mainly dealt in the section entitled "Rights of the Nation" although several rights are also mentioned in other sections, e.g. under the general principles or in the section dealing with the judiciary.

Principle 19 states that "all the people of Iran enjoy equal rights and there is no distinction on grounds of race, colour, language and the like". Religion, sex and political conviction are not mentioned.

Principle 12 declares that while Shi'ite Islam is the official religion other denominations enjoy full respect and freedom in the practice of their religious duties and functions, such as in matters of marriage, divorce and inheritance. Zoroastrian, Jewish and Christian Iranians are recognised as official religious minorities who "are completely free to practice their religious duties within the framework of the law" (prin. 13). Principle 14 states that non-moslems are to be dealt with "on the basis of justice and goodwill", provided they are not "anti-Islamic and have not conspired

against Iran". One is left wondering who is an "anti-Islamic" non-moslem and what difference in treatment there is for official and unofficial religious minorities, especially in the light of serious allegations of persecution of members of the Bahai sect, who number over 100,000 in Iran.

The family, as the fundamental unit of the Islamic community, is to be upheld and protected by the law (prin. 10). In "upholding the rights of women in every respect" the government has an obligation to create conditions for the development of a woman's character and personality and to protect mothers, widows, elderly women and homeless children (prin. 21). No indication is given, however, of any specific measures to improve the legal status of women particularly in marriage and divorce law.

Freedom of thought is absolute (prin. 23) but not so with freedom of expression (prin. 24). The latter, together with the freedom to life and property (prin. 22), freedom of association (prin. 26), freedom of assembly (prin. 27) and occupation (prin. 28) are qualified by such vague phrases as "unless deemed otherwise by law", "provided Islamic principles are not contravened", "provided the independence, freedom, unity and Islamic principles of the Republic are not flouted". In view of the conflicting authority of the Guardian Council, the National Assembly and the judiciary over the interpretation of laws and the vagueness of the "Islamic principles", the constitution does not confer upon these fundamental rights the protection they deserve.

Principle 25 prohibits wire-tapping and interception of communications "unless carried out at the express request of the legal authorities". It is not clear who are "legal authorities" for the purposes of this principle.

Somewhat quaintly the unofficial english translation of principle 32 states: "Unless otherwise prescribed by law, no one can be arrested arbitrarily." There then follow detailed and clear provisions for the legal protection of arrested persons. Punishment can be prescribed only by the courts on the basis of the law (prin. 36). Principles 38 and 39 make physical torture and ill treatment for the purpose of extracting information or confessions illegal and punishable.

In accordance with Islamic notions of social justice, rights to social security and health (prin. 29), free education up to secondary level (prin. 30), housing (prin. 31) and free legal aid for the poor (prin. 35) are clearly and concisely stated. Principles 43 to 50 lay down the principal directives for an economic policy which aims at the fulfilment of basic needs and the providing of equal opportunity. Ownership in the public, private and cooperative sectors of the economy is to enjoy the full protection of the law, "in so far as it does not contravene Islamic law".

### *Emergency*

During an emergency situation the government may limit rights for up to 30 days with the approval of the National Assembly. However, the emergency may then be prolonged indefinitely with the permission of the Assembly (prin. 79). Principle 69 permits the Assembly in times of emergency to deliberate in closed session, but its decisions at such sessions will be valid and binding only if reached in the presence of the Guardian Council and approved by three-quarters of the Assembly. A full report of the secret sessions must be published at the end of the emergency situation.

### *Conclusions*

The Iranian constitution, which makes several references to pan-Islam, should be seen as part of the Islamic revival, sometimes militant, sweeping across the Islamic world. For example last year the Pakistan government made some changes in its legal system to bring it closer to the Islamic system (see ICJ Review No. 23). Recently the Egyptian electorate have approved in a referendum constitutional reforms which would make the sharia the principal source of law in Egypt. Of course, the distinctive feature of the Iranian constitution is that it has gone much farther than any other Islamic state or constitution in proclaiming a "Velayat-e-Faqih" (government by theologians or "hierocracy"). The concentration of so much authority in the hands of one man (or a small group of men) in the hope that he will be a just despot may seem unrealistic to those who do not believe in the imamate, but for the shiah majority of Iran it is an integral part of their faith. Whether or not this will work in the world of twentieth century politics, it is still too early to say.

The first draft for a new Islamic constitution, which was published on June 18, 1979, provided for a clearer government structure than the final text which inserted the preponderant role of the imam. Clearly the final draft, both in substance and in form, is the product of a more political body.

The Constitution has several positive features, in particular in the formulation of economic and social rights which are, in the words of the Preamble, "the provisions of equal educational and employment opportunities, as well as the satisfaction of human wants".

Other provisions try to regulate details which are usually not dealt with at constitutional level but this is understandable in

a post-revolutionary phase in which people zealously guard against a return to previous practices (e.g. employing foreigners in the public service).

On the other hand some weaknesses, in particular in the human rights sector, have been pointed out. Confusion about who is to interpret the vague and broad clauses, which permit restrictions on fundamental rights, does not augur well for religious minorities and secular dissent. Much will depend on further developments within the power structure of the Iranian government and on the stand taken by a truly independent judiciary.

The constitution skirts the issue of autonomy with rather summary principles on local councils (prin. 100-106), and a principle on the freedom of moslem denomina-

tions in family law matters (prin. 12). The test for human rights in Islam may well become its capacity to deal fairly with ethnic, religious and secular minorities.

Iran is a party to the International Covenant on Civil and Political Rights. The Human Rights Committee under this covenant did not complete its examination of the report submitted by the Shah's government first because the Committee requested additional information, and then because of the overthrow of the Shah's regime. The new government has yet to submit a report. The Committee's examination of the constitution and laws of Iran will provide an opportunity for an interesting discussion on human rights in this new Islamic republic ruled by men of religion.

## *Palestine*

### *Torture in the Occupied Territories*

To attempt to write or say anything impartial, objective or balanced about the situation in the occupied territories of Palestine is a thankless task. Either side in the argument will quote and make use of those passages which support its own case so as to give a distorted impression of what has been said.

At the 1980 session of the UN Commission on Human Rights the Secretary-General of the International Commission of Jurists made an oral intervention describing a recent brief visit to the occupied territories and an interview he had had with the Israeli Prime Minister, Mr Begin, who invited him to raise any matters concerning hu-

man rights. Those extracts of his speech which seemed favourable to the Israelis were reported in the Israeli english language and Hebrew press with no mention of the criticisms he had made. There is a group of Palestinian lawyers in the West Bank and Gaza strip affiliated to the ICJ who work to promote the legal protection of persons in the occupied territories. Seeking to redress the balance, they prepared a translation of the full text of the speech with a view to its publication in the arabic press in Jerusalem. When it was submitted to the Israeli censors, the entire speech was deleted, including even the passages which had already been quoted in the Israeli press.

Now further use of the speech has been made by Mr Leo Nevas, a distinguished human rights activist in the United States, a lawyer and former Chairman of the New York NGO Human Rights Committee. In a report on visits he made to Israeli prisons to review and evaluate allegations of torture of Arabs in detention in Israel and the occupied territories, he referred to this matter in the following terms:

"The International Commission of Jurists recently reported that their investigation which dealt with a period of about eighteen months from the middle of 1978 until the end of 1979 brought to light no reports of torture, which it was certain would have been disclosed by its investigation. The Commission report stated that in their judgment there was no systematic practice.

The International Commission of Jurists report also expressed gratification at the steps taken to prevent physical torture of suspects, and investigate and follow through on any allegations of ill-treatment. The report further welcomed the agreement with the International Committee of the Red Cross pursuant to which the ICRC interviews alone all suspects under interrogation every fourteen days. It expressed the wish that more countries would permit this safeguard which is apparently unique to the territories."

The first paragraph of this passage is wholly inaccurate. There was no 'investigation' by the International Commission of Jurists, and no 'Commission report'. The Secretary-General's speech referred only to conversations he had had with lawyers, officials and others during a 5 day visit to Israel and the occupied territories. He did not say he received no 'reports of torture'. He said he had received no reports of *physical* torture in the last eighteen months, but that he believed that unacceptable methods of psychological pressure were being used.

Many victims of these forms of psychological torture considered this type of torture more difficult to bear than physical torture. (Mr Nevas' report refers throughout to 'torture' but nowhere deals with the allegations of psychological methods of torture).

The relevant passage of the Secretary-General's speech reads in full as follows:

"On the treatment of detainees, I know that the Special Committee has formed the opinion that there is a continuing practice of physical torture of suspects under interrogation. I do not know how recent are the incidents on which they have based this conclusion. My enquiries were directed particularly to the last 12 or 18 months, and all I can say is that I received no reports of physical torture during this period. If there was a continuing practice of this kind, I feel sure that the defence lawyers to whom I spoke would have known of it. I do not question that there may have been isolated incidents of physical violence, but this is a different matter from a systematic practice. In any event, I told the Prime Minister that I was impressed by the steps which had been taken to prevent physical torture of suspects, to investigate allegations of ill-treatment, and to bring to justice those found responsible for it (though the penalties inflicted are usually derisory). I also welcomed the agreement under which the International Committee of the Red Cross (ICRC) is now able to and does interview alone every 14 days all those under interrogation. I wish more countries would permit this safeguard, which is, I believe, uniquely applied in the occupied territories of Palestine. I said, however, that I believed that in some cases unacceptable methods of psychological pressure were applied, in particular in the form of prolonged periods of sleep deprivation, accompanied by prolonged standing or sitting, bound hand and foot and hooded and in complete isolation. I told him that victims in many countries

had said that they found such methods far more difficult to endure than physical torture. I was not aware that he had himself once suffered from it for a period of 60 hours. In his book, "White Nights", he commented that he had "experienced on a small scale the special means of pressure, possibly the worst conceived by the ancient international inquisitorial science, depriving a man of sleep". In an eloquent passage later in the book he describes the effects of this form of torture. "I came across prisoners who signed what they were ordered to sign, only to get what the interrogator promised them. He did not promise them their liberty; he did not promise them food to sate themselves. He promised them - if they signed - uninterrupted sleep! And they signed. For there was no purpose in continuing to suffer, and they wanted to sleep... And, having signed, there was nothing in the world that could move them to risk again such nights and such days... The main thing was... to sleep." I fear that some of those convicted by the Israeli military tribunals have been convicted on the basis of confessions obtained by these means. It is moreover to be regretted that there is no system of appeal from these tribunals, no second instance able to correct errors in law or procedure.

I urged Mr. Begin and other Israeli authorities to whom I spoke to lay down very clearly what methods of interrogation were permissible and what impermissible, and to have a system of inspection or spot checks to ensure that the rules were adhered to. This could perhaps be done by the ICRC delegates who, although at present allowed

to interview periodically suspects under detention, are not allowed to visit the interrogation centres. The suspects are brought to them in the prison blocks."

There are other inaccuracies in Mr Nevas' report. For example, he asserts that there is "an appellate procedure within the military justice system to prevent abuses by its military authorities in the territories". There is, in fact, no appeal court and no appeal hearing. All there is is a right to submit 'appeals and complaints' against sentence and conviction to the military commander (Mil. Proclamation No. 378 of April 22, 1970, section 43). This right is largely pre-empted by the practice of the military tribunals of submitting their proposed sentences to the military commander for approval before they are pronounced.

On another point, he says that the delegates of the International Committee of the Red Cross can see prisoners 'within' the fourteen day period after they have been taken into custody, whereas in fact they are able to see them only on the fourteenth day.

He also states that the 'basic safeguards by the English Common Law exist within Israel and the administered territories'. Apart from the lack of a criminal appeal court for appeals from the military tribunals in the occupied territories, which has already been referred to, habeas corpus applications and petitions for judicial review of the acts and decisions of the military authorities are subject to the prior consent of the military commander, a consent which is rarely given (Mil. Decree 164 of Nov. 3, 1967).

# Syria

Since independence in 1946 Syria's history has been one of active involvement in the Arab-Israeli conflict, of internal turmoil in the form of a succession of military coups and of repression of civil liberties under emergency legislation. The present government is led by President Hafez al-Assad who came to power by means of a bloodless coup in 1970 and has become the longest-serving head of state in Syria in modern times. He was elected unopposed to a second term of seven years by national plebiscite in 1978. Under the Constitution of 1973, approved by national referendum, the form of government is republican with a strong executive, the President being at the same time head of state, commander-in-chief of the armed forces and secretary general of the Ba'ath Party, which is the "leading party in the society and the state" (art. 8 of the Constitution) and dominates the ruling Nationalist Progressive Front in which three other socialist parties and the communist party are also represented. In reality the latter parties exercise little power and are subordinate to the Ba'ath Party.

Internal and external security are major concerns of the government. Responsibility for state security lies with the President and is implemented through the armed forces, the security services and 20,000 special "defence units" under the command of the President's brother Rifa'at Assad, who is emerging as the second most powerful person in the governing élite. Emergency laws suspend a wide range of human rights guaranteed by the Constitution and outlined in the UN Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, both of which have been ratified by Syria. Syria was the first state party to be examined by the Human Rights Committee in 1977. The sup-

plementary report of Syria was considered in 1979. The Committee expressed particular concern about the state of emergency, the Court of State Security and the failure of the Syrian government to inform the Committee of the obligations from which derogations had been made under the state of emergency as required by article 4 of the Covenant. Questions were also asked on whether Syria had fulfilled its obligations under the Covenant in areas under the control of its armed forces outside its own territory, as required by article 3 of the Covenant. Despite the claim by the Syrian representative before the Committee that emergency measures are introduced only for purposes of state security, the present situation in Syria, including the recent dissolution of the bar and three other professional associations, indicates that these powers are used to suppress criticism of the government.

## *State of Emergency*

The law concerning states of emergency is contained in Decree No. 51 of December 1952. Although the decree precedes the Constitution it is validated by article 110 of the Constitution which states: "The President of the Republic can declare and terminate a state of emergency in the manner stated by the law", and article 153 which states: "Legislation in effect and issued before the proclamation of this Constitution shall remain in effect until it is amended so as to be compatible with its provisions".

Decree No. 51 came into effect in March 1963 following a military coup. The decree empowers the President to appoint an Emergency Law Governor and to invest

him with "all powers over internal and external security". Article 4 of the Decree sets out the measures which he can take. These include placing of restrictions on the freedom of individuals in respect of meetings, residence and change of residence; precautionary arrest of suspects or of anyone endangering public security and order; authorisation to investigate persons and places; and delegation of these powers to any person to perform any of these tasks (art. 4(a)). He may also order censorship of all written or spoken communications. Most significantly, the decree does not provide for a time limit on any of the restrictive orders of the Emergency Law Governor. Violations of these orders can be tried only under martial law, "whatever the quality of those who committed, incited or participated in them". The decree also states that the following offences in the civil penal code shall be tried under martial law: offences against state security and public order, offences against public authority, offences disturbing to public confidence and offences which constitute a general danger.

### *Detention Under Emergency Legislation*

The civilian legal code provides for unlimited investigative detention with certain safeguards against abuse through powers assigned to the prosecutor general, but under martial law the role of the prosecutor general in these matters is eliminated and most detentions occur under the emergency law rather than the civilian legal code. The security forces, by delegation of the Emergency Law Governor, have wide powers to arrest and detain persons for unlimited periods in the absence of any or sufficient evidence to try them. Except in some cases where legal proceedings are being taken,

family members of detainees are usually not notified, nor are arrests documented by any central authority, so that it is very difficult for relatives to trace those detained. Sometimes if the security forces fail to apprehend the suspect, they may instead detain members of his family against whom they have no charges. During the height of the Syrian intervention in Lebanon between 1976 and 1977 the Syrian forces abducted many Lebanese nationals and Palestinians from Lebanon and kept them under detention in Syria. The number of abductions fell after 1978. In 1978, on his reelection to a second term of seven years, President Assad publicly acknowledged the abuse of detention powers, and announced that in the future they would be limited only to cases "in connection with the security of the state as stipulated by the law". 179 prisoners were released but they later turned out to be persons being detained for minor civil offences. Matters regressed again in 1979. Because of the secrecy surrounding the application of detention powers and the paucity of documentation on the arrests carried out, it is difficult to estimate the number of persons detained under Decree No. 51, but it is believed to be about 5,000.

Those detained under the emergency law are held in military prisons, detention centres and sometimes in civilian prisons. Although conditions of imprisonment vary from case to case, conditions in military prisons and detention centres are more severe. Frequent reports are received of torture in detention centres to obtain information or as punishment. According to Amnesty International, nine persons died as a result of torture between 1975-77. Detainees are not permitted to contact their families, lawyers or even other prisoners during the interrogation stage when the possibility of torture is greatest. Thereafter family visits are allowed on an arbitrary

basis but prisoners are not allowed to correspond. The International Committee of the Red Cross has not been allowed to visit prisoners held for security offences.

Detainees are sometimes released if they undertake to desist from further political activity. Although mandatory exile is constitutionally prohibited, political prisoners detained for a long period are sometimes offered the choice of 'voluntary' exile.

### *Court of State Security*

Political detainees are not tried before the ordinary penal courts, which retain considerable independence, but before the Court of State Security, constituted by Decree No. 47 of 28 March 1968. Members of the court are appointed by the President, and consist of a president and civilian and military judges. The Court of State Security, which replaces the military courts set up by Decree No. 6 of January 1965, has jurisdiction over the same offences as those courts including "actions held to be incompatible with the implementation of the socialist order in the state whether they are performed, spoken or written, or come about through any means of expression or publication" (Art. 3(a) of Decree No. 6); offences contrary to any "legislative decrees which have been or are to be issued and are connected with the socialist transformation" (Art. 3(b) of Decree No. 6); (a non-mandatory death sentence is prescribed for these two offences); offences against state security; attack on any public or private establishment; incitement to disturbance, strife or demonstrations; (a mandatory death sentence is prescribed for the latter two offences); and violations of the Emergency Law Governor's orders (art. 6(a) of the Decree No. 51). In addition, Decree No. 47 provides for a catch-all provision widening the jurisdiction considerab-

ly by giving the Court of State Security the power to hear "any other case referred to it by the Emergency Law Governor" (art. 5).

While defendants in non-security related cases before the ordinary penal courts are entitled to legal representation, and legal aid where necessary, and generally get a fair and open hearing, the rights of individuals charged with security offences may be denied by the Court of State Security under article 7(a) of Decree No. 47. Under this article although the rights of defence remain in force for other courts, the Court of State Security shall not be bound to observe them at any stage of the investigation, prosecution or trial. Defendants are not allowed to contact lawyers before the trial, and although there may be legal representation at the hearing, reportedly appointed by the court, rights of the defence are at the discretion of the court. The hearings are *in camera* and sometimes of a very summary nature. There is no right of appeal from the rulings of the Court of State Security, which must be ratified by the President. He may, if he wishes, annul the decision by granting an amnesty, or order a retrial or reduce the sentence. The decision of the President cannot be contested or revised by any other authority (art. 8 of Decree No. 47).

### *Repression of Political Parties*

The decrees discussed above enable the government to repress political activity by parties other than those represented in the ruling coalition. Members and supporters of divergent movements within the Ba'ath Party are under detention, some since 1971, for refusing to cooperate with the present government. Many alleged pro-Iraq Ba'athists were arrested from 1975 onwards when relations between the two countries became strained. The communist



party within the ruling coalition is the pro-Soviet wing, and the dissenting splinter group is banned, as are various Marxist and splinter socialist groups. In addition, members of the Kurdish Democratic Party are under detention for protesting against the displacement of Syrian Kurds from the three main Kurdish areas in the north of the country to an area near the Euphrates, and the repopulation of the areas by Arab Bedouins from the south.

Article 4 of the law for a state of emergency, discussed above, permits the government to restrict freedom of speech and assembly. Virtually all media are government-controlled. Newspapers exercise self-censorship, particularly on topics about which the government is sensitive, mainly security and internal violence.

### *Internal Violence*

The government's concern about security has been accentuated by the increased violence between Sunni Moslems who are said to form about 68% of the country's total population of 9 million and the Alawites, a sect of the Shia branch of Islam, who form only about 12% of the total population but dominate the government, the Ba'ath Party and the armed forces. (The President is himself an Alawite). Sectarian violence is not a new phenomenon in Syria. In recent years however the severity of the problem has increased. Among the particularly serious incidents in 1979 were the massacre in June of 63 cadets in Aleppo, Syria's second largest city and a trading centre in the northern part of the country, and the outbreak of violent clashes between rival groups in Latakia in August. Sporadic and, at times, serious shooting and rioting have continued during 1980 in Damascus, Aleppo and other major cities.

While some of the killings have been the result of inter-Alawite feuding over the sect's influence on the Syrian leadership, most of the terrorist acts are attributed to extremist groups of Sunni Moslems in particular the Muslim Brotherhood (Ikhwan) but also others such as the Islamic Liberation Party and the Islamic Liberation Movement. The government has accused foreign powers, notably the United States and Israel, of instigating the violence. Regular troops and special defence units have been deployed in the troubled areas. Alleged members of the Brotherhood and similar groups form a large proportion of the political detainees in Syria, and many of them have been tried before the Court of State Security. Fifteen alleged members were executed in June 1979, and death sentences on three others were commuted to life imprisonment. Following the Aleppo massacre in June 1974, 14 persons were sentenced to death, twelve of them in absentia. Five others were executed in December 1979.

The motivation behind the violence seems to arise less from religious animosity than from resentment at the rapid increase in the power and privileged status of Alawites and discontent with the leadership of President Assad and the Ba'athist policy of secularism. In fact, in March 1973, following a wave of violence, the draft Constitution had to be amended to include an article that "Islam is the religion of the President of the Republic", a perfunctory gesture which did not satisfy many Syrians. There is also widespread dislike of the government's policy of socialism which is regarded as having failed, with soaring inflation, progressive taxation, high military expenditure and rampant corruption (corruption and security were top priorities on the agenda of the quadrennial congress of the Ba'ath Party in January of this year). There are protest also at the continued repression

of individual rights, most recently demonstrated by a wave of strikes described below.

### *Action Against Professional Groups*

At its meeting in January 1980 the general assembly of the Damascus Bar Association decided to call for a one-day strike of its members in support of its demands for the ending of the state of emergency, the liberation of all detainees held under it, the transfer of all other detainees to prisons under civilian control and the abolition of the Court of State Security. Following discussions with the authorities who implied that reforms were in contemplation, the Damascus Bar Association, supported by the Syrian Bar Association, decided to postpone the strike for two months. However, despite government assurances that all prisoners would be tried before the ordinary civilian courts, persons continued to be brought before the Court of State Security and allegations of torture made by the defendants were disregarded. Several persons were allegedly held for execution without trial. Finally, on 31 March a strike was called by the Syrian Bar Association, supported by the associations of medical practitioners, engineers and architects. In some cities, such as Aleppo, Hama, Deir ez-Zor and Itlib, there was a general strike which in some cases continued for several weeks.

The government responded by sending the army into the cities to suppress the

strikes which resulted in a large number of deaths. For instance, in Djisr El Chougour, a city with a population of about 100,000, it is reported that 300 people were killed. In Aleppo individuals were said to have been tied to tanks and dragged through the streets. Houses and commercial property were destroyed. The head of the medical practitioners' association was killed.

It is estimated that over a hundred lawyers, doctors, engineers, and architects were arrested following the strike and are being detained under martial law. The detainees include the president of the Syrian Bar Association, several noted lawyers, former batonniers and government ministers. None of the detained lawyers have been brought before any tribunal, nor have they been permitted visits from their families or from representatives of the bar associations. It is rumoured that several of the detainees have been tortured.

The bar associations along with the three other associations which supported the strike were dissolved by decree as from 9 April on the grounds that they had acted outside their mandate. It is understood that the government now proposes to reconstitute a bar association with appointed officers as opposed to the previous practice of elected officers, thus removing the independence of the legal profession. A letter from the Secretary-General of the Union of Arab Lawyers addressed to President Assad requesting the withdrawal of these measures against the Syrian Bar Association has been ignored.

## South Africa

No-one should be misled by the minor reforms which have been taking place in South Africa. Their chief importance is that they reflect a growing uncertainty in the ranks of the boer nationalists about some aspects at least of their policies. But the changes themselves relate to relatively insignificant forms of discrimination. More hotels, restaurants and theatres are to be opened to all races, blacks are to be allowed to participate in trade unions, subject to various controls, job reservation is to be limited and there are some relaxations in the field of sport. The new Prime Minister, P.W. Botha, has even raised the possibility of amending the Immorality Act and the Mixed Marriages Act.

But the essential policies of discrimination remain. Millions of blacks have lost their South African citizenship and have had the citizenship of one of the 'bantustans' forced upon them. The pass laws, the Group Areas Act and now the Homelands Citizenship Act provide the essential structure of *apartheid*, and there is no suggestion that these will be modified, still less repealed. On the contrary, they are being enforced with increasing vigour. Over 2,115,000 people had been forcibly removed from their homes by 1978 and at least another 1,727,000 are due for removal. Meanwhile, the machinery of repression remains intact with its detention without trial or banning of those working by lawful means for a fundamental change in South African society, particularly the black leaders.

Bishop Tutu, the first black secretary general of the South African Conference of Churches, had his passport withdrawn on 5 March 1980 shortly before he was due to make a tour to Europe and America. The Rev. David Russell, an anglican priest in

Cape Town, has been sentenced to one year's imprisonment for breaking his banning orders by attending a church synod to which he had been summoned by Archbishop Burnett, and to a further 2 1/2 years suspended provided he does not break his banning orders during the next 5 years. (In a telegram to Mr. Brezhnev in January, David Russell pleaded for the release of a russian priest, saying "The arbitrary abuse of power can never serve the struggle for a humane society which is free and just. May you apply wisdom and compassion in releasing Father Dudko").

Following the now famous protest demonstrations by the Soweto schoolchildren in 1976, the coloured schoolchildren throughout South Africa have now taken the lead in their communities by protesting against the discrimination in their education. The school students' protest in the Cape peninsula in April 1980 led to a boycott of classes by about 100,000 coloured pupils, supported by their teachers. There were similar boycotts in support in Johannesburg, Durban, Bloemfontein, Natal and other centres. The police reactions varied. On some occasions they showed restraint, and even stayed away from the schools, but on other occasions hundreds of students have been arrested, they used tear gas and batons to disperse the demonstrations, and on one occasion the security forces opened fire and killed two schoolchildren.

The Minister of Coloured Relations, Mr. Marais Steyn, threatened to close the schools unless the boycott ended, but after the protests, the Department of Education and Training announced increases in the school building and teacher training programme to reduce the admitted shortage of 7,000 classrooms. The main grievances of the students were

- the acute shortage of qualified teachers and textbooks,
- the discrimination in funds allotted per capita for the different racial group,
- the failure to repair damaged schools,
- the permit system for admittance to educational institutions,
- the absence of autonomous student representative councils at some schools,
- the compulsory wearing of expensive school uniforms,
- the access of the security police to school premises,
- the abuse of corporal punishment, and
- unfair dismissal of teachers.

Worse even than the discrimination in schools is the misery and suffering inflicted on hundreds of thousands of blacks by the 'resettlement' policies of the white regime, in its attempt to make the map of South Africa accord with its racial policies. The Black Sash, perhaps the most moderate of all organisations working for social change in South Africa, devoted the February 1980 issue of its magazine to this subject. In a series of well-informed articles it describes the harrowing effects of these inhuman policies. One of these, an 'emergency report' prepared by their Johannesburg Advice Office, is reproduced in full below.

The magazine's editorial echoes the angry tone of this report and demands that the government "cease all removals forthwith, abolish the pass laws and the Group Areas Act, permit freehold property rights for all and provide an equitable education system". Otherwise, it says, "the frustrated expectations of 1979 might prove to be the beginning of the end rather than the end of the beginning - the final destruction of all hope for peaceful change rather than the beginning of a new era of trust and cooperation between all people".

The Johannesburg Advice Office's emergency report is as follows:

### *Resettlement and Influx - the Grand Design*

On November 8, 1979, the Prime Minister said that a reckless or careless Government could turn South Africa into a powder keg within a matter of days.

In the Advice Office we are now watching the fuse to that powder keg burn shorter by the day.

Never in the 16 years since this office was opened have we experienced such anger expressed by black people or such a sense of impending catastrophe. Never have we felt more urgently the need to try to communicate to white South Africans the realities of what is happening.

The pass laws have always been one of the main causes of black alienation but if historians who in the future write of our times are able to isolate the final straw which precipitated disaster it may well prove to be the 1979 legislation introducing the fine of R500 which can now be imposed on the employer of an unregistered worker.

The significance of this legislation has been obscured by the three month moratorium and by the general delusion that the Riekert report was to be welcomed as a tremendous step forward. The fine is a direct result of Dr Riekert's recommendation and goes hand in hand with the implementation of another of his recommendations that "Labour Bureaux should exercise strict control over the admission of contract workers..."

### *Compelled*

Up to now the only saving factor for the people controlled by the pass laws has been the total inefficiency of the system. All the vast, ponderous and expensive structure of influx control and efflux enforcement has

not been able to prevent people from moving to places where they could find work. They have been impelled by the necessity of earning a living for themselves and for their survival of their children, and illegal jobs have been readily available.

The Financial Mail of October 12, 1979, published a table prepared by Dr Jan Lange of UNISA showing how workers benefit from urban work even if they have to go to prison as a consequence. There is a 702.7% improvement in living standards for a worker from Ciskei who works illegally in Pietermaritzburg for nine months and spends three months in prison, a 170% improvement for someone from Lebowa who works six months in Johannesburg and spends six months in prison, and a 28.5% improvement for a person from Bophutha Tswana who works only three months in Pretoria and spends nine months in prison. Someone from Ciskei who works illegally in Pietermaritzburg for three months and spends nine months in prison improves his living standards by 234.2%.

As far as we know Pietermaritzburg has never been shown to be a city where employers pay exceptionally high wages. Such vast percentage increases in living standards, won at such high cost, can only mean that living standards in the Ciskei are standards of such abysmal poverty that 'living' is probably the wrong word to use about them. The Ciskei seems to be the most poverty stricken of all the homelands because of the extent of the dumping of 'superfluous' black people from so-called white South Africa which has taken place there but the other homelands are not far behind in the poverty stakes in all those many areas where large scale resettlement has taken place.

The new fine means that there will be no more illegal work available. Approximately 50,000 people have been registered on one-year contracts in terms of the mora-

torium. Many of them will probably not be in the same job at the end of the contract period and so will not be able to register again. Some have already lost their jobs and have been endorsed out.

Thousands did not fulfil the necessary conditions or did not find a job or lawful accommodation in time to be registered. To these must be added the thousands of new homeland job seekers who will be precipitated into the labour market at the end of this school year. There will also be the many labour tenants who are currently being removed from land in Natal where they have been able to grow crops and keep cattle into closer settlements where they only have a suburban-sized garden with no readily available water and where no livestock is allowed.

They are thus being rendered entirely dependent on jobs which they are not allowed to take. They will swell the great army of jobless, hopeless, poverty-stricken people in rural areas.

Over and over again during the last few weeks men and women have said to us: "But my children have no food." "My children are hungry." "What will my children eat?" Poverty, hunger and the diseases of malnutrition have been a way of life for thousands of South African families for many years. Workseekers in the homelands are not allowed to move to the cities to seek for work and, if they do so, are not allowed to register in jobs they have found. The only way in which they can obtain legal employment is if they are recruited or requisitioned from the labour bureau in their home area. Such recruitment is now being strictly controlled and cut back.

### *Hungry People*

Until this year people have been able to find illegal work and so have survived. Now,

for the first time in all our experience, we have no hope and no comfort to offer to the unregistered and the endorsed out. Always before we, and they have known that they would be able to go on somehow even if it meant arrest and imprisonment from time to time. All hope has now been removed and when you take hope away all that is left is rage and anger, bitterness and hatred.

This anger is not going to be confined to the homelands. People are not going to go and sit to watch their sons and daughters die of hunger. They will remain in town and, as they are hounded from their places of illegal accommodation (another of Dr Riekert's recommendations), their rage will be fuelled to fuel again the rage of those who are legally in town and to whom so many promises have been made but not fulfilled.

Dr Koornhof has said that Dr Riekert's recommendation that Section 10 qualified urban people can move from one town to another provided they have a job and accommodation is already in operation. The West Rand Board is endorsing them out. (Does the bureaucracy deliberately misinterpret or obstruct ministerial promises?)

Dr Koornhof has said that if a man buys a house his wife can come to town to live with him. Neither the East Rand nor the West Rand Administration Board has initiated any schemes for low cost housing. WRAB's cheapest house for purchase costs R6,600. We have been told that ERAB tells people who apply to buy that the cheapest house requires an immediate deposit of R1,600. Neither Board will accept a man on to the waiting list to rent a house unless his wife has a permit to be in the area and she cannot get that permit until he has a house.

## *No Houses*

In any event the waiting list for a rented house in Soweto is *nine years long*. People

who have been on the list since 1970 are told that they will never get a house unless they buy one and most do not earn enough to make that even a remote possibility. They are presently watching with bitterness the wealthy who can afford to buy jumping the queue.

Only the few who can afford to pay for their privileges or who work for very large companies are experiencing any benefits from the changes which have been so much talked about.

Apart from all questions of justice and morality could anything be more dangerous? The present visible alliance between Government and big business in the "total strategy" which is seen to be causing immediate personal disaster to thousands of individuals can only result in the black/white political conflict becoming irrevocably identified with the Marxist/Capitalist economic conflict. Any so-called free enterprise system which totally denies all freedom to the majority of the people cannot possibly survive. Those who believe that the benefits of capitalism and free enterprise can be spread through the whole population and can bring about justice must prove it and must do so *now*. Tomorrow will be too late.

The following cases are not just a few horror stories selected for their shock value from months of work. They all presented themselves during the last ten days. They are all typical of many others. They are all people who are suffering, entirely hopeless, and very very angry.

*Mr Z.* was endorsed out on November 8. He has a wife and three children at Nqutu where he lives in a closer settlement. He used to have three cows and the use of land to grow crops but was resettled in 1972 and forced to sell the cattle. Now he has nothing. His last contract expired in October 1978 and he has remained working illegally in Johannesburg since because he

has no alternative. Now he can no longer find illegal work and is refused registration in his present job.

*Mrs S.* is a widow. She came to Johannesburg from Groblersdal in 1965 and was previously registered in employment to March 20, 1978. She then worked illegally but on October 1, 1979, began working for a new employer who tried to register her. She was endorsed out — ordered to leave Johannesburg within 72 hours — on November 6. She did not comply with the terms of the moratorium because she had been registered for some of the time during the previous three years and it only applied to those who had been *illegally* employed. Her employers tried to register her too late but it would have made no difference had they been in time. She has one child, two others have died, a blind father and two blind siblings to support.

*Mr M.* was endorsed out on November 2. He belongs nowhere at all having been born on the farms at Heilbron, worked in Vereeniging from 1940 to 1963 and in Johannesburg since then, sometimes registered and sometimes not. His wife is a Johannesburg person who has been living legally in the emergency family accommodation provided by WRAB in the Meadowlands Hostel since the Kliptown floods of 1977. For this sordid accommodation she has to pay R45.60 a month because the family occupies eight so-called beds. They have four minor children and also support two minor children of her deceased mother. The moratorium could not help *Mr M.* because his three years' previous employment was legal.

*Mrs H.* was endorsed out on November 6. She has been in her present job which she must now leave, for over 15 months but her employer didn't bother to try to register until it was too late, in spite of the impassioned appeals of *Mrs H.*'s husband who is a qualified Johannesburg person. They have two small children.

*Mr M.* was ordered to leave on November 6. His last contract expired in December 1976 but he remained unregistered with the same employer until September 30, 1979. He found a new job and on October 31 went to register. He was given a temporary permit to January 31, 1980, and was told to report back with proof of accommodation. He reported with proof that he is the legal occupant of a bed in the Diepkloof hostel and was promptly endorsed out — presumably because six months of the previous three years' employment had been legal.

*Mr N.* is a married man with seven children, the eldest of whom is 17 years old. He comes from the Greytown district where he has a small piece of ground on a hillside. He says it is too steep to grow anything and there is no water. He has no cattle. He has a job in Johannesburg but was refused registration in terms of the moratorium, because he had been unemployed for the previous two years. He was discharged from the job because he could not register. He began working in Johannesburg in 1952 but has not been registered since the one-year contract system was introduced in 1968.

*Mr S.* is in his early twenties. He came to Johannesburg from the Estcourt district last year to look for his first job. He has been working for a firm since September 1978. When they tried to register him WRAB demanded payment of back registration fees amounting to R36.45 and when it had been paid, endorsed him out. He did not comply with the moratorium because his employment with this company did not amount to one full year prior to July 31. He has been discharged because he could not register.

*Mr M.* comes from Tsolo in Transkei. He was working on contract in Alberton but the last contract was not renewed and he was retrenched. He has a job and accom-

modation in Johannesburg. He has been refused registration and told to go back to Tsolo. His wife is legally resident in Johannesburg and their two children, aged three years and six months respectively, were born here. His chances of recruitment from Tsolo are remote. His choice is to go there as is legally required of him and accept total separation from his family (if his wife goes with him they will all be hungry whereas she can at least work in Johannesburg if she stays), or he can remain 'illegal' and unemployed in Johannesburg looking after the babies while his wife works. He left the office threatening to 'make big noise'.

*Three women*, one of them very young and in tears, who were registered as domestic workers in terms of the moratorium came to complain that as soon as they were registered, their employers reduced their wages and began deducting from the reduced pay the registration fees charged by WRAB for the previous periods of illegal employment.

One of them found a new job immediately and applied to be allowed to work out the period of her contract with the new employer. She was endorsed out. These employers evidently took the attitude that, as the registration was only valid as long as the women remained in their employ, they could unmercifully exploit them.

*Miss K.* is 18 years old. She was orphaned and came to Johannesburg in 1976 when she was 15 to live with her uncle who is her only male guardian. He owns his house in Soweto. She found a job and went to register on October 30. Endorsed out.

*Mr N.* comes from Mapumulo where he has a wife and two children. He lives with another woman in Johannesburg by whom he has one child. (A frequent consequence of the migrant labour system.) He has been working legally in Johannesburg since 1963 but was prevented from acquiring urban

rights by the introduction of the one-year contract system in 1968. His last contract ended on June 20 and was not renewed because his employer replaced all men with women workers. He found a new job and has lawful accommodation in a hostel. Endorsed out on September 26, 1979. He has no land at home — just a small garden.

*Mr N.* is on contract to WRAB to January 20, 1980. He has been told that his contract is not to be renewed and says he was told they don't want to employ contract workers anymore. He will have to return to Mount Frere and wait hopelessly for a new recruitment. His wife and five children, all under seven years of age, are legal qualified residents of Johannesburg.

*Mrs T. N.* also comes from the Transkei. She was endorsed out of the East Rand last year. Her husband qualifies in terms of Section 10(1)(b) and was told she could have a permit if he bought a house. He was told he would have to pay a deposit of R1,600. He earns R136.45 per month as a telephone operator for one of the East Rand municipalities.

*Mr P. M.* qualifies in Port Elizabeth as 10(1)(b) and this was stamped in his Reference Book in September last year. He has a job with a big company in Johannesburg and accommodation in his cousin's house. Endorsed out.

*Mr S. M.* comes from Tseki near Witsieshoek in Qwa Qwa. He has a wife and two children aged eight and six years. He has a garden about the size of two Johannesburg northern suburbs drawing rooms but nothing grows in it because there is no water. Every pailful has to be carried a considerable distance. He has trained as a carpenter and never once in the last three years since he completed his training has he been offered any kind of job at all through the tribal labour bureau. He has seen houses being built at Witsieshoek and has tried many times to get work there but there are



never any vacancies. He has been working at piece jobs illegally in Johannesburg since last year. Found regular employment. Endorsed out. Lost the job.

Mrs C. M. comes from Mokorong near Potgietersrus. She began working in Johannesburg in 1963 but has never been registered and went back to Mokorong last year for some months. She had a job and was endorsed out on October 18. Her husband has been in his present job for 16 years but cannot obtain any Section 10 rights because his employers did not register him until 1971. He will qualify as 10(1)(b) in 1981 if he stays in the job. If he loses it he will be refused new registration and will fall under the one-year contract system losing all hope of ever qualifying in the future. They have two children. Her husband was

furiously angry when we explained to him that the law does not permit his wife to live with him. He gathered up his seemingly meaningless marriage certificate and all the other documents and marched his wife out of the office.

She came back two hours later to confront us. She said white people were always talking about black people getting an education and what was the point of her having studied for her matric when she is not allowed to work. She said: "Why don't you whites do something about this. You make these laws and is there nothing for us?"

This article was prepared before the mid June riots in the Cape Town region, which resulted in many deaths.

## Uruguay

### *Torture and Ill-Treatment*

According to recent information, torture continues to be used by military interrogators. Torture methods have been refined. It is applied today in a more selective and "scientific" manner. Army and police torturers are assisted by physicians whose task is to supervise the condition of the victim undergoing questioning. Not even prisoners who have stood trial and are serving a sentence are exempted from this aberrant practice. During 1979 there have been several reported cases of people withdrawn from their normal places of imprisonment to be questioned and tortured in military or police units to ascertain whether there was any form of political activity or eva-

sion plans in detention centres. This entails a permanent state of distress and anxiety among the population of prisons, aware of the risk of being tortured again at any time.

### *Conditions of Detention*

Prisoners located in such military establishments as EMR 1 (Prison of Libertad, for men) and EMR 2 (Prison of Punta de Rieles, for women) endure extremely hard conditions. They are under a severe, dehumanized military system, with frequent disciplinary punishments for puerile reasons. Prisoners, particularly those deemed to be dangerous by the authorities, are sub-

jected to serious harassment which has provoked the death of at least 16 prisoners, three of them in 1979\*.

All prisoners, men and women alike, live under arbitrary rule. Thus, while those considered to be "dangerous" are not allowed to work, and spend 23 out of 24 hours confined in their cells, others carry the heavy burden of forced labour. No distinction is made between prisoners under trial and prisoners serving sentence. Forced labour does not form part of the penal sentence and no remuneration is paid for the work performed.

### *Number of Political Prisoners*

The government has officially announced that there are approximately 1,600 political prisoners. However, lists made public omit numerous cases. According to information from reliable sources, the actual figure is in the order of 2,000. It is still a high proportion of the country's population of 2,765,000 inhabitants.

In the course of 1979 a few hundred political prisoners were set free. This was not the result of a measure of amnesty or mercy, but of the elapse of time. Most of them were freed after serving jail sentences of an average of six years, an exorbitant amount of time in any case, considering that they were sentenced for such offences as criticism of the armed forces ("Vilipendio a las fuerzas armadas"), distribution of clandestine political propaganda ("Asocia-

ción subversiva" or "Asistencia a la asociación subversiva") and other offences of the Military Penal Code. About 50 persons ordered to be freed by the military courts are still being kept in prison under article 168 subparagraph 17 of the Constitution ("Medidas prontas de seguridad"). According to this provision the Executive may, in exceptional circumstances, keep a detainee under administrative detention. In such cases an administrative sentence, of unlimited duration, is added to the sentence of the court.

Former prisoners thus live under the threat of being sent to prison again. As a rule, they are not allowed to follow university studies, nor are they permitted to work as civil servants or to teach; usually they also encounter difficulty in finding a job in the private sector. All this is due to the fact that they have a certificate describing them as having a "negative background".

Prisoners, or rather their families, have to pay very high sums of money for their "food, clothing and lodging costs in prison" and the costs of the legal proceedings. The daily tariff for being held in jail is now over 2 US dollars; for an average 6-year sentence, this totals \$ 4,380. At the minimum monthly earnings rate of \$ 75, nearly five years' earnings would be needed to meet this debt.

### *Military Justice*

Criminal proceedings within the military

\* Ana M. González Pieri, aged 26, imprisoned in EMR 2 since 1975. As a result of torture she caught asthmatic bronchitis. Despite this illness she was forced to do hard labour. Died in prison on 6.5.79. Peter Lynch, teacher, 68. Suffered from a heart complaint but was forced to bathe in very cold water. This provoked a heart attack. Died in EMR 1 in August 1979. Ruben Porteiro, 55, married, 2 children. Following torture, a kidney had to be partially removed. Sentenced to 8 years of imprisonment. Died in EMR 1 on 23.11.79 owing to lack of adequate medical care.

Héctor Gómez Lombardi, single, 40. Heart condition, resulting from ill-treatment. After 6 years of imprisonment in EMR 1 was released to die a few days later (in 1979).

jurisdiction have been very slow; indeed, there are still several hundred prisoners who have not so far received their sentences, in spite of the fact that they have been jailed for seven or even eight years in protective custody awaiting trial. However, this delay is not due to any procedures to ensure the defence rights of the accused. The military judges tend to be officers lacking the necessary legal background, and the ability, free discernment and impartiality which are essential to pronounce judgment. Civilian defence lawyers have been persecuted, arrested, banished and subjected to innumerable harassments in order to force them to give up criminal defence work. In most cases a political prisoner is tried by a military officer who is not a lawyer, with a military prosecutor, who is an officer but not a lawyer and a third army officer, also not a lawyer, as advocate for the defence. Under such conditions there is no way of securing the right to a fair trial. This situation has not improved.

### *Disappearances*

Some cases of "disappearance" in Uruguay are still unresolved. Unresolved also are many cases in which Uruguayan military and police commandos were allowed into Argentina for the purpose of kidnapping, questioning, illegally deporting and sometimes murdering Uruguayan political opponents who had refugee status in Argentina. (In such circumstances 130 Uruguayan refugees have disappeared in Argentina, and many indications point to heavy responsibility of both countries' security services in these cases).

### *State of Emergency*

From the institutional point of view,

Uruguay continues to be ruled – uninterrupted since 1968 – under emergency provisions, known as "prompt security measures" ("Medidas prontas de seguridad").

These amount to what elsewhere is called a "state of siege". These provisions, designed to be used only in exceptional circumstances and for short periods of time, are regulated by article 168, subparagraph 17, of the Constitution. It gives expanded powers to the Executive, which may thus control the freedom of persons, the rights of assembly and association and freedom of expression, and also, through misuse of these measures, financial, economic and educational matters. Since the forced dissolution of Parliament in June 1973, there is not a single body to control the use of emergency powers; this has led to a clear and notorious abuse of power.

The political Constitution has lost its validity as the fundamental law of the country following the adoption, in the form of Decrees of the Executive, of the so-called *Actos Institucionales* (Institutional Acts, nine of them so far) which substantially modify several structural aspects of the State as well as fundamental rights. None of these amendments have been submitted to a plebiscite – a requirement set forth in the Constitution for any amendments to a Constitutional article.

In 1970 Uruguay ratified the International Covenant on Civil and Political Rights of 1966. Nevertheless, the military regime has never fulfilled its obligation under article 4(3) to inform other States parties to this instrument of any suspension of fundamental rights. To this date, it has also not complied with article 40(1). It should have submitted a report in 1977 on the manner in which the rights under the Covenant were being applied in Uruguay, but this has never been done.

## *Dismissals of Civil Servants*

Institutional Acts Nos 7 and 8 of 27.6.77 and 1.7.77 are still fully effective. They provided a "legal" basis for the dismissal of several thousand civil servants, putting an end to the right to security of employment in the public sector. Not a single area of the Administration has been spared, be it education, public health, state trading and industrial corporations or the judiciary. These Acts established the means for the military authorities to carry out – and this is continuing in 1980 – a deep and thorough "political and ideological purge" affecting all persons known to dissent from the country's present leadership or to have expressed marxist, progressive or democratic ideas in the past.

## *Freedom of Expression*

Any expressed political opposition, any manifestation of disagreement with the military leadership and any report on the violation of human rights are prevented under the severe censorship, and may lead to civil and criminal sanctions. There is a continuing lack of freedom of the press, radio and television. Fresh cases of closure affecting written and oral media have occurred in 1979 (adding to the 125 temporary or final closures of media ordered up to December 1978). Article 21(a) of the Security of the State Act (Ley 14.068 de Seguridad del Estado y el Orden Interno) is still fully operational; it sanctions with up to two years' imprisonment for

*"The malicious dissemination of false news which may either provoke public alarm, disturb public order, cause evident damage to the economic interest of the State or prejudice external or internal national credit."*

## *Trade Union Rights*

As regards union rights and freedoms, ILO Conventions Nos 87 and 98 on Freedom of Association and Collective Bargaining are still not respected. The ILO Committee on Freedom of Association has repeatedly called attention to this fact (its latest report is dated February 1980). After the dissolution of the Trade Union Congress (Convención Nacional de Trabajadores, CNT) representing 90% of the country's unions and about 400,000 workers, any sign of independent union activity or any attempt to keep the CNT alive have been and continue to be severely suppressed. A great number of union leaders are still in jail and many others have had to go into exile.

## *Political Rights*

In spite of a profusely publicised "plan for democratic restoration" and for the "holding of an election in November 1981", basic political rights continue to be suspended. All political activities are banned; 14 political parties and groups have been outlawed and the three remaining ones are subject to an absolute ban on all activities. To ignore this prohibition may imply long sentences of imprisonment under the Security of the State Act or long periods of detention under the "prompt security measures". In addition a different type of sanction is also applied, i.e. dismissal if the offender is a civil servant or a reduction of take-home pension in the case of a retired person. The government proposes to hold a Presidential election in November 1981 with a single candidate nominated by the only two parties which would be authorised ("Partido Colorado" and "Partido Blanco" (or "Nacional")); an essential prerequisite will be for this candi-

date to receive approval and endorsement from the "Junta de Comandantes en Jefe", the highest military authority in the country. All marxist and christian democrat groups and those which at any given time may have joined them for electoral purposes would be excluded from the process of "restoration". The election would be held against the background of the fully operational provisions of Institutional Act No. 4 of 1.9.76, which deprived over 10,000 citizens from widely different political sectors of their political rights for a period of 15 years.

The Partido Blanco (Nacional) publicly expressed its outright rejection of such an election, which it considered a parody. As a result, several Blanco leaders were arrested and sanctioned without any right of appeal. Some had their parliamentary pensions reduced and others were dismissed from the public service. Parties making up the left-wing coalition, "Frente Amplio", have not had any opportunity to express their views, since they are prohibited from carrying on any political activity. Frente Amplio's Presidential candidate in the last general election, held in 1971 - Mr. Liber Seregni, a retired General - was sentenced to 14 years of imprisonment in 1979, and this for purely political reasons.

Since 1973, when the National Parliament and the provincial councils (Juntas Departamentales) were dissolved, a "Consejo de Estado", whose members are designated by a government body controlled by high ranking military officers, has taken over the legislature.

## *Exiles*

Half a million Uruguayans live outside their country, either because they have been persecuted for their political activities or views or because there are no jobs,

schools or university open to them. Not a single measure has been adopted to facilitate their return to the country; on the contrary, the government continues, as a political weapon, to refuse applications by exiles for the renewal of passports, which leaves them without documents.

## *Economic Situation*

The cost of living increased by 85% in 1979. The purchasing power of salaries and wages is now down to 45% of its value 10 years ago. In 1979 49% of the National Budget was devoted to police and armed forces expenditures, that is, mostly to internal repression. The national minimum salary level amounts to about 75 US dollars per month; the average monthly salary is approximately 100 US dollars. The increasing deterioration of the situation has been accompanied by a higher concentration of wealth in fewer hands and impoverishment of a large segment of the population.

## *Military Control*

Real power lies with the senior military commanders. In a great many State entities and government bodies a so-called "military presence" has become apparent. This is the case with such policy-making organs as the Consejo de la Nación (which includes high level military officers), Consejo de Seguridad Nacional, Junta de Comandantes en Jefe, Comisión Política de las Fuerzas Armadas. The same has happened within the managing boards of state trading corporations, government industries, public utilities and provincial authorities (Intendencias Departamentales). That presence is supposed to be institutionalized through a new draft Constitution now being prepared.

The "ideology of national security" provides an ideological basis for the regime and is embodied in Institutional Act No. 2 of 12.6.76.

### *Conclusion*

Other than a reduction in the number of political prisoners due to the expiration of their sentences, no concrete facts or signs are to be found of improvement in the human rights situation during the past year. On the contrary, there is every indication

that the regime continues to practice repeated and systematic violations of civil, political, economic, social and cultural rights. Internally, any action for the respect of fundamental rights, as well as any resistance to the regime, is virtually impossible given the scope and extent of military repression. Hence, action by the international community takes first place as the most important means of protection for the victims of the situation and of bringing pressure to bear with a view to a genuine restoration of the rule of law and democracy.

# COMMENTARIES

## *Commission on Human Rights*

### *Introduction*

The Commission on Human Rights met for the first time with its enlarged membership and for an extended session of six weeks from 4 February to 14 March 1980.

Expectations about the outcome of this session were low owing to the prevailing political climate, the Soviet intervention in Afghanistan, the internal exile of Andrei Sakharov, and the western reaction to these acts. It was also feared that the increase from 32 to 43 members would render the debates more protracted.

In spite of all this, under the chairmanship of Ambassador W. Sadi (Jordan), this session proved surprisingly fruitful.

Among the principal features of the session were the increased role of the non-aligned countries, the condemnation of the USSR for violations of the right to self-determination, a right which it claims to promote, and the agreement by consensus to create a working group to deal with the problem of disappeared persons.

The Commission adopted a record number of thirty-eight resolutions dealing with almost all the items of its agenda.

### *Disappeared Persons*

It will be recalled that last year, in spite of a request to the Commission by the General Assembly to consider and act upon the question of disappearances, the Canadian delegation were unable to obtain support

for the appointment of a special rapporteur on the subject. The matter was discussed last year in a Sub-Commission, which in a strongly worded resolution proposed that it should establish a working group on the subject. This year a more positive attitude on the part of many delegations was evident. The Geneva NGO Committee on Human Rights sponsored a meeting early in the session at which NGO experts briefed representatives of at least 17 delegations upon the problem. During this meeting as well as during the Commission's debates, it was mainly noted that unlike "traditional" violations of human rights, disappearances enabled the governments concerned to deprive disappeared persons of all rights to which detainees are entitled, since the authorities deny any knowledge of their whereabouts. The need for urgent international action was stressed, which should be of general application, since the practice was world-wide. This position was strengthened by the report of Mr. Ermacora (Austria) who was appointed last year to enquire into disappearances in Chile. The Chilean Government had refused to collaborate with him as it felt no obligation to do so unless a general procedure was established to deal with all cases of missing persons throughout the world.

After prolonged negotiations, in which the Iraqi delegate played an important part, agreement was reached on a resolution adopted by consensus on establishing, for a period of one year, a working group of five of its members, to serve as experts

in their individual capacities, to examine questions relevant to enforced or involuntary disappearances of persons. The working group is to seek information not only from governments or intergovernmental organisations, but also from humanitarian organisations and other reliable sources, and, in establishing its working methods, is asked to bear in mind the need to be able to respond effectively to information that comes before it and carry out its work with discretion.

Mrs Varela (Costa Rica), Mr Nyamekye (Ghana), Mr Al-Jabiri (Iraq), Mr Tosevski (Yougoslavia) and Viscount Colville (United Kingdom) were appointed by the chairman as members of the Working Group.

### *The Right to Self-Determination*

Recent developments in the international situation, particularly in Afghanistan, gave a new colour to discussions on the right to self-determination. The debates, more than ever, had a strong political connotation and, together with the related question of the violations of human rights in the occupied Arab territories, took no less than two weeks to conclude.

The USSR which usually champions the cause of people fighting for self-determination found itself under sharp attack because of its intervention in Afghanistan. In a strongly worded resolution, the Commission condemned the "Soviet military aggression against the Afghan people", demanded "the immediate and unconditional withdrawal of all Soviet troops stationed on Afghan territories" and called upon all Member States to refrain from providing any assistance to "the present imposed regime of Afghanistan". This resolution received 27 votes in its favour, which included the votes of many non-aligned

countries, although some of them expressed reservations about its wording.

Under this item the Commission adopted for the first time a resolution concerning the Western Sahara question. It took note of the recommendation of the OAU and of the General Assembly on the right to self-determination and independence of the people of Western Sahara as being "the sole means of putting an end to the violation of their fundamental rights resulting from foreign occupation", and decided to consider the question again at its next session.

The signature, on March 26, 1979, of the Israeli-Egyptian peace treaty gave rise to even more bitter debates on the Palestinian question. The Secretary-General of the ICJ, reporting on his visit in January 1980 to the occupied Arab territories, said that he was left in no doubt that the Camp David Agreement and the so-called autonomy proposals were utterly rejected by the population of the occupied territories and would not lead to a fair and lasting peace, a point made by other delegates as well. One of the resolutions on this item reflects the Special Committee's concern about the "Israeli homeland" doctrine which envisages a mono-religious (Jewish) state established on a territory that includes those territories occupied by Israel in June 1967. It again condemned Israeli practices and breaches of the fourth Geneva Convention calling them war crimes and an affront to humanity. Another resolution reaffirms the right of the Palestinians to self-determination in a fully independent and sovereign state. Noting that the Camp David accords have been concluded outside the framework of the United Nations and without the participation of the PLO, it declares that such agreements "have no validity in so far as they purport to determine the future of the Palestinian people and of the Palestinian territories".



On a happier note, the Commission sent, at the end of its session, a congratulatory telegram to the government of Zimbabwe, welcoming its accession to independence.

### *The Right to Development*

Under this item a resolution reaffirmed "the inalienable right of all nations to pursue freely their economic and social development and to exercise full and complete sovereignty over their natural resources" and recognized the necessity "to guarantee the right to work, education, health and proper nourishment through the adoption of national and international measures".

In order to facilitate and guide next year's debates, the Commission decided that the item would be divided into two sub-items: (a) Problems related to an adequate standard of living, the right to development, and (b) the effects of the existing unjust international economic order on the economies of the developing countries, and the obstacle that this represents for the implementation of human rights and fundamental freedoms. A UN seminar on this latter subject is to be held in Geneva in July 1980.

Another resolution requests the Secretary-General, in his study on the "regional and national dimensions of the right to development", to elaborate the conditions required for the effective enjoyment of the right to development. The Commission recommended also that ECOSOC should authorise the Sub-Commission to appoint Mr Raúl Fenero (Peru) as a special rapporteur to prepare a study on "The New International Economic Order and the Promotion of Human Rights".

### *Human Rights Situation in Various Countries*

Apart from the situations discussed in private under the Resolution 1503 procedure, there were public discussions on the situation in many other countries. As usual, the situations in Palestine, South Africa and Chile were discussed under specific items, while others were raised under the more general item 12: "Question of the violation of human rights and fundamental freedoms in any part of the world".

### *South Africa*

The progress report prepared by the *ad hoc* Working Group of Experts on Southern Africa, together with a special report of the Group on the cases of torture and murder of detainees in South Africa showed once again that there was no fundamental improvement of the human rights situation in South Africa.

The Commission adopted six resolutions on the item. Besides condemning, once again, the policy of *apartheid*, the Bantustans and the illegal occupation of Namibia, the Commission renewed the mandate of the *ad hoc* working group to continue its studies. Mr Khalifa (Egypt) was requested to continue updating the list of organisations assisting the racist regime of South Africa and the Commission decided to organise a seminar in 1981 to study the formulation of measures to prevent transnational corporations from collaborating with the racist regimes of Southern Africa.

The question of the establishment of an international criminal tribunal under Article 5 of the Convention against Apartheid arose again following a suggestion made by the Syrian Arab Republic to the group of three set up by the convention to examine reports of states parties. The group endorsed

ed this proposal, and a few delegations, including Senegal, made statements during the Commission's debates, calling for a diplomatic conference in order to create the international tribunal. This idea is reflected in two of the resolutions, one requesting the Ad Hoc Working Group to undertake a study on "the implementation of international instruments such as the Convention, including the establishment of international jurisdiction", the other requesting the Secretary-General to renew his invitation to state parties to suggest ways and means for the establishment of such a tribunal.

### *Chile*

Mr A. Dieye, the Special Rapporteur, noted that, unlike last year, the situation had deteriorated in many respects. Torture was still widely used and because the Chilean judiciary lacked independence, it was not able to perform its functions adequately and to respond satisfactorily to writs of amparo. This point was corroborated by Professor Ermacora, the expert on missing persons, according to whom more than 5,000 amparo applications had been rejected. Although no new disappearances had occurred since 1977, 680 cases of disappearances still remained unexplained.

A representative of the ICJ made a statement confirming the conclusions of the Special Rapporteurs and adding that the Group of Twenty Four in Chile working on a democratic draft Constitution had been subjected to severe intimidation.

The Commission expressed its indignation at the human rights violations in Chile and urged the government to investigate the fate of the missing persons.

### *Guatemala*

Discussions on the situation in Guatemala had been initiated last year after the assassination of Dr A. Fuentes Mohr. This year, the claim of the government of Guatemala that certain preliminary legal steps had been taken to investigate the assassination was contradicted by Mrs Fuentes Mohr who described the proceedings as "fake" and denounced the widespread repression in Guatemala. Several delegates and NGOs representatives expressed their anxiety at the massive political assassinations. (According to a recent ICJ report, there were more than 1,300 assassinations during the period of one year ending in June 1979, mainly by paramilitary groups.) A resolution noting the "lack of due respect and fundamental freedom" in this country, and urging the government of Guatemala to take the necessary measures to restore basic human rights, was opposed only by the delegates of Argentina and Uruguay.

### *Democratic Kampuchea*

The Vietnamese invasion of Democratic Kampuchea prevented any debate last year on the excellent report prepared by Mr Abdelwahad Bouhdiba on the human rights violations in this country under the Pol Pot regime (cf. ICJ Review No. 22, p. 24).

The Democratic Kampuchea question arose at the beginning of the session, with the problem of its representation, which was resolved by a ruling from the Chairman to apply the General Assembly decision to recognise the Government of Democratic Kampuchea. This led to a walk-out by the delegations of the socialist states.

Most of the delegates deplored the terrible human rights violations described in Bouhdiba's report. Many of them, both

from the western and non-aligned groups, noted with concern that the Vietnamese invasion of Democratic Kampuchea had only served to increase human suffering. Subsequently, the Commission adopted a resolution endorsing Mr Bouhdiba's report, condemning the gross and flagrant violations of human rights which have occurred in Kampuchea and condemning further the invasion and occupation of parts of the country.

In a related context, the Commission adopted a resolution at the initiative of the Canadian delegation to empower the Secretary-General to establish contact with appropriate governments in cases of human rights violations resulting in mass exoduses of refugees and to make concrete recommendations for ameliorating such situations.

### *USSR – Sakharov*

On the opening day the western group tried unsuccessfully to persuade the Commission to send an emergency telegram to the government of the USSR about the exile of the academician Andrei Sakharov to Gorki. The matter was finally debated under item 12 dealing with gross violations of human rights. The USSR delegation made a move to prevent the debate on the grounds that it was a matter within their domestic jurisdiction, and outside the Commission's mandate which was supposed to deal only with massive human rights violations. This raised the question of the extent to which the Commission is empowered to deal with individual cases. The Commission has created precedents in the past: when it sent a cable in 1974 to the Chilean government concerning the fate of certain Chilean political leaders, when it discussed the case of Steve Biko, and when it sent a cable on Dr Fuentes Mohr's assas-

ination. Perhaps a correct view on this question was that of Mr Mbaye (Senegal) who said that "the Commission could only be seized in cases of emergency which concerned a serious threat to the life of a person".

In any event, the debate took place, enabling several delegations – mostly from the western group – to express their disapproval of the measures taken against Mr Sakharov. While not taking specific action on the Sakharov case (other than to defer it for discussion next year), the Commission adopted, by consensus, under another item a Canadian resolution appealing to all governments to encourage and support individuals striving for the promotion of human rights.

### *Equatorial Guinea*

Following the Commission's decision taken last year to remove the case of Equatorial Guinea from the private 1503 procedure and to discuss it publicly, the Commission had before it this year an interesting report by Mr F. Volio-Jimenez (Costa Rica), who was appointed as a special rapporteur under ECOSOC Resolution 1235.

This report discloses all the communications made to the Commission under the 1503 procedure, denouncing the regime of terror which reigned in Equatorial Guinea, under the dictatorship of F. Macias Nguema. Since 1969, Macias had led a policy of systematic repression, assuming, as from 1971, executive, legislative and judicial powers. Arbitrary detentions and arrests, torture and political assassinations were common in Equatorial Guinea.

In August 1979, Macias was overthrown by a coup d'état, following which the special rapporteur was able to visit the country and investigate the allegations. His enquiries led him to corroborate "the majori-

ty of the most serious complaints" made to the Commission on Human Rights. Like the ICJ observer sent to the trial of Macias (see ICJ publication "The Trial of Macias in Equatorial Guinea - The Story of a Dictatorship" by A. Artucio, Geneva 1979), he attested to the appalling living conditions of the people. Though the situation had considerably improved under the new government, all human rights had not been restored and the special rapporteur appealed to the Commission to provide Equatorial Guinea with assistance which the government of Equatorial Guinea itself wanted. During the discussion, the Secretary-General of the ICJ supported the special rapporteur's recommendations. He enlarged the statement to include all the countries in the process of returning to democratic government from a system of dictatorial abuse, saying that the Commission should keep under review all such countries and suggesting that the United Nations offer them assistance under its programme of advisory service. Australia, Netherlands and Zambia submitted a draft resolution to that end, but given the lack of time, the Commission decided merely to examine the subject at its next session. It also decided to request the Secretary-General to appoint an expert to assist the government of Equatorial Guinea in restoring the human rights situation and to provide this government with all necessary assistance.

### *The Resolution 1503 Procedure*

Mixed feelings about the 1503 confidential procedure changed into widespread disillusionment this year, when the report on Equatorial Guinea revealed that as from 1974, the Commission had been well aware of the atrocities committed in that country. A priest interviewed by the special rapporteur stated that the people of Equatorial

Guinea had never noticed any indication of any activity by the Commission. Likewise, when addressing the General Assembly last year, the President of Uganda, a country also dealt with under "1503", recalled the lack of response by the UN during the nightmare of eight years dictatorship and asked: "For how long will the United Nations remain silent while governments represented within this organisation continue to perpetrate atrocities against their own people?"

According to the ECOSOC 1503 resolution, the Commission on Human Rights can either decide to make a thorough study on a situation or, with the consent of the government concerned, to appoint an *ad hoc* committee to carry out an investigation and, in either case, to submit their resulting report to the ECOSOC. The Commission has never taken either such action. Rather, it has under its confidential procedures resorted to various kinds of innocuous procedures which leave states concerned relatively indifferent. There is also a growing impression among NGOs that each case is not decided on its merits, but that under a spurious doctrine of equal treatment (i.e. between individual countries and regions) there is a practice of negotiation which has the result that the minimum level of sanctions has become the pattern for all the cases under consideration.

An example of the ineffectiveness of the 1503 procedure is provided by the case of Uruguay, a country about which repeated communications have been made to the Commission since 1975, and whose appalling human rights situation is well known. Violating for the second time the rule of confidentiality, the Uruguayan government made a declaration reported in the Uruguayan press (see *El dia*, March 7, 1980), welcoming the cooperative attitude of the Commission which limited itself to requesting the Secretary-General to use his good

offices. This illustrates how little oppressive governments are disturbed by the procedure. It also contrasts with the forthright condemnation by the Human Rights Committee (under the Covenant on Civil and Political Rights) of cases of torture in Uruguay.

It is becoming increasingly apparent to non-governmental organisations' observers – and this view is shared by some delegates – that the 1503 procedure tends to protect rather than restrain governments which violate human rights, owing to the rule that there can be no public discussion on countries singled out for consideration under the resolution 1503 confidential procedure.

Moreover, this applies even though a communication under 1503 relates only to a particular aspect of the general violations being carried out by a government. For example, because the plight of the small tribe of Ache-Guayaquis Indian of Paraguay has been referred to under the procedure, it is no longer possible to raise in public any other human rights violations in Paraguay. This operates against the spirit and the letter of the 1503 resolution itself which speaks of "situations" and not countries.

Until now all communications which have been referred to the Commission by the Sub-Commission have been prepared by non-governmental organisations, since it is only NGOs who have sufficient information to establish a prima facie of a 'consistent pattern of gross violations of human rights'.

Many NGOs are beginning to question the usefulness of submitting any further communications to the UN under this procedure.

NGOs have not been allowed to raise such situations publicly, but state delegations can, and in recent years have shown an increasing willingness to do so. This year

the Chairman allowed NGOs to name countries when giving oral information on human rights violations, provided that they did not "attack" governments. Though it is not clear what constitutes an "attack", this ruling is welcome and it is to be hoped that it will be followed in future. The examples of Guatemala and Equatorial Guinea show that situations of gross violations are more effectively dealt with in public, and in a way which better meets the expectations of public opinion.

This year, the following countries were announced as having been selected or retained for consideration under the confidential procedure: Bolivia, Ethiopia, Indonesia, Paraguay, Republic of Korea, Uganda and Uruguay, together with two new countries, Argentina and the Central African Republic. The case of Burma was dropped without any explanation, and it is not apparent why Bolivia and Uganda were left on the confidential list. The working group of the Commission on communications is to consider next year, under the confidential procedure, those situations which the Commission has decided to keep under review.

Owing to the failure of the government of Malawi to respond adequately to the Commission's enquiries about the allegations of discrimination and persecution against Jehovah's Witnesses, the Commission recommended the ECOSOC to pass a resolution (which it subsequently did) regretting this lack of cooperation and expressing "the hope that the human rights of all citizens of Malawi have been fully restored and in particular that adequate measures are being taken to provide remedy to those who may have suffered injustice". This seems to be the furthest that the ECOSOC has yet gone in a public resolution in condemning a situation brought to its attention under the resolution 1503 procedure.

## *Standard-Setting Activities*

While progress was slow on the Draft Convention on the Rights of the Child and on the Draft Declaration on Religious Intolerance, the Commission's Working Group on the Torture Convention made steady progress on the substantive articles. As the text stands at present, it prohibits the return of a person to a state where he could be tortured (Art. 3), requires State Parties to make all acts of torture an offence under national criminal law (Art. 4), provides for the duty to detain an alleged torturer (Art. 6), the extradition of such alleged torturer (Art. 8), judicial assistance between states (Art. 9) and the rights of the victim of an act of torture (Arts 12, 13, 14, 15), and makes certain non-penal provisions of the Draft Convention applicable to acts of cruel, inhuman and degrading treatment (Art. 16). Two noteworthy innovations were brought about this year. The first is this latter provision in Article 16, which was introduced jointly by the ICJ and Amnesty International. It extends certain obligations under the Draft Convention to other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture. The second is an enlargement of the right of the victim to compensation (Art. 14).

The only articles on which the working group was not able to reach agreement relate to jurisdiction and the principle of *aut dedere aut punire*. It is hoped that the working group will meet again one week before the beginning of the plenary session and will be able to resolve these outstanding points, and then examine the implementation articles.

## *Further Promotion of Human Rights*

Among resolutions passed under this agenda item, the Commission called upon governments to ensure that no-one is prose-

secuted or persecuted because of his connection, especially a family connection, with a suspected, accused or convicted person.

Although it did not discuss the case of Alicja Wesolowska, a Polish national employed by the UN Secretariat who was tried and convicted in camera before a military court in Poland for espionage (without the usual access to the prisoner by the UN Secretariat being granted), the Commission appealed to Member States to respect their obligations under the Convention on the Privileges and Immunities of the United Nations and requested the Secretary-General to use his good offices to ensure full enjoyment of human rights by UN staff members.

The Commission joined the General Assembly in requesting the Secretary-General to redesignate the UN Division of Human Rights as a Centre for Human Rights, in the hope that this would enable it to obtain a better basic infrastructure and permit it to discharge its functions in a more effective manner. Next year, an openended sessional working group is proposed to continue the analysis of ways and means for further promotion and encouragement of human rights. It is expected that the question of a High Commissioner for Human Rights will be debated again, increasing support for it having been expressed during this session. It is also likely that the possibility of convening emergency sessions of the Commission or of its bureau in order to consider reports of gross and flagrant violations of human rights of an urgent nature will be further discussed and perhaps agreed.

## *Miscellaneous*

The Commission requested ECOSOC to authorise the Sub-Commission to prepare the studies suggested by the Sub-Commission (see ICJ Review No 23, p. 31). One of these is on the independence of the judiciary and of the legal profession.

# ARTICLES

## *Afghanistan and the Rule of Law*

by  
A.G. Noorani\*

The entry of the armed forces of the USSR into Afghanistan in December 1979 followed by the ouster from power on December 27 of President Hafizullah Amin, his execution soon thereafter, the installation of a new regime headed by President Babrak Karmal and the events that have taken place since raise issues of the greatest importance concerning the observance of the Rule of Law, both internationally and within national frontiers.

They concern the sovereign independence of nations, the use of force, the scope of the right of self-defence and of treaties of mutual assistance, observance of the Geneva Conventions and respect for human rights.

On January 14, 1980 the General Assembly of the United Nations strongly deplored "the recent armed intervention in Afghanistan" and called for "the immediate, unconditional and total withdrawal of the foreign troops from Afghanistan." On January 8 President Carter remarked that "the Soviet invasion of Afghanistan is the greatest threat to peace since the Second World War." In January President Leonid Brezhnev, in an interview with a *Pravda* correspondent, said that "Soviet military contingents" had been sent to Afghanistan

at the request of the Afghan Government, on the basis of the Treaty of Friendship, Goodneighbourliness and Co-operation concluded between the two States on December 5, 1978, in order to resist "external aggression". He added, "The only task assigned to the Soviet contingents is to assist the Afghans in repulsing the aggression from outside."

This contention raises issues of fact and law strikingly similar to those raised after the Soviet interventions in Hungary in 1956 and in Czechoslovakia in 1968<sup>1</sup>.

Afghanistan has an area of 657,500 sq. km and a population officially estimated at 13.5 million after the 1979 census. It is divided into 28 provinces and is a land of wide ethnic diversity. Only the Pashtuns claim it as their chief area of habitation. The others have co-ethnics across the borders — the Turkmens, Uzbeks and Kirghiz in the north who speak Turkish languages, the Persian speakers in the west, and the Brahuis and Baluchs in the south and east. The Nuristanis inhabit the areas through which Pakistan and China communicate. The Hazaras constitute the Shi'ite minority and are situated in Central Afghanistan<sup>2</sup>.

In the last century the country was a buffer State between the Russian and Brit-

\* Advocate, High Court Bombay; regular contributor to *The Indian Express* and some periodicals; author of *The Kashmir Question*; *India's Constitution & Politics*; *Ministers' Misconduct*; *Brezhnev Plan for Asian Security*; *Indian Political Trials*.

ish empires as a result of various Anglo-Afghan treaties and Anglo-Russian Conventions. The Treaty of Peace signed at Rawalpindi on August 8, 1919 released Afghanistan from British control over foreign affairs. By another Treaty, signed at Kabul on November 22, 1921, "The British Government and the Government of Afghanistan mutually certify and respect each with regard to the other all rights of internal and external independence." Art. 2 settled the frontiers between India and Afghanistan<sup>3</sup>.

Meanwhile Afghanistan had concluded a treaty with the Russian Socialist Federative Soviet Republic on February 28, 1921. Article 1 of the Treaty provided, "The High Contracting Parties, recognising their mutual independence and binding themselves to respect it, now mutually enter into regular diplomatic relations." Article 2 read thus: "The High Contracting Parties bind themselves not to enter into any military or political agreement with a third State which might prejudice one of the Contracting Parties."<sup>4</sup>

On August 31, 1926 Afghanistan concluded another treaty with the Soviet Union. Art 1 of the treaty declared, "In the event of war or hostile action between one of the contracting parties and a third power or powers, the other contracting party will observe neutrality in respect of the first contracting party." The second Article emphasised mutual non-aggression. The parties agreed not to do anything in their countries which might cause political or military harm to either. By Art. 3 they agreed "to abstain from all sorts of armed or unarmed interference in one another's internal affairs."<sup>5</sup>

In 1929 King Amanullah was obliged to abdicate because of tribal revolts. For a brief nine months the throne was usurped by the rebel leader, Bacchai-Saquo, till he was driven out by General Mohammed Nadir. The General was assassinated in

1933 when his son, Mohammed Zahir, became King and ruled till 1973.

Towards the end of 1923, King Amanullah promulgated a Constitution of 73 articles ordaining an absolute monarchy (Art. 1). The traditional Loya Jirga (Grand National Assembly) approved of this Constitution. King Nadir Khan improved on it considerably and granted the people a new Constitution on October 31, 1931. With the addition of new clauses on February 22, 1933 this Constitution remained in force till October 1965. It established, for the first time, a constitutional monarchy. The Government of the realm was carried on by a Cabinet with the Prime Minister at the head, responsible to the National Assembly. Article 2 laid down: "No one is imprisoned or punished without an order in accordance with the Shariah law or the appropriate laws."<sup>6</sup>

The Afghan-Soviet Treaty of Neutrality and Non-aggression signed in 1931 largely renewed the Treaty of 1926. Along with Estonia, Latvia, Persia, Poland, Rumania, Turkey and the USSR, Afghanistan signed in London on July 3, 1933, the Convention for the Definition of Aggression proposed by the USSR<sup>7</sup>. On September 26, 1934, Afghanistan became a member of the League of Nations. It, however, maintained a strict policy of neutrality during the Second World War.

After the war King Zahir did little to improve the constitutional position despite the fact that much had changed within the country. The Loya Jirga passed a new Constitution which the King promulgated in October 1965. A liberal Press Law was enacted that year but the King declined to accord his assent to the Political Parties Law passed by Parliament. However, taking advantage of the Press Law a number of journals appeared representing various political factions; most notably, *Khalq* (The Peoples) in 1966 published by Mr. Nur



Mohammad Taraki and *Parcham* (Flag) in March 1968. Elections were held under this Constitution in 1965 and 1969.

### *The End of the Monarchy*

On July 17, 1973, former Prime Minister Mohammad Daoud Khan seized power in an almost bloodless coup and proclaimed the Republic of Afghanistan with himself as its President and Prime Minister.<sup>8</sup>

President Daoud was no more enthusiastic in establishing truly responsible Government in the country. In early 1977 a new Constitution was approved by the Loya Jirgah but only one political party functioned under it, the National Revolutionary Party (*Hezh-i-Inqelab-e-Meli*).

Unknown to him another party was functioning clandestinely and in the most sensitive field, the armed forces.

### *The Overthrow of Daoud*

On January 1, 1965 the People's Democratic Party of Afghanistan (PDPA) was established. Messrs Karmal, Hafizullah Amin and Babrak Karmal were its leading figures. A year later the Party split into two factions — the *Khalq* and *Parcham* each with its own organ.<sup>9</sup> In July 1977 the two reunited. On April 27, 1978 they came to power in a bloody coup staged with the help of the armed forces. President Daoud and his entire family were killed.<sup>9</sup> While there is no hard evidence of Russian assistance, two informed observers, *The Economist's* correspondent and Mr. Selig Harrison, suspect that the Mig 21s which played a decisive role were flown by Russian pilots.<sup>10</sup> A booklet entitled "On Saur (April) Revolution" published later revealed the techniques of infiltration followed by the PDPA.<sup>11</sup>

The first radio announcement of the coup on April 27 said "The power of State resides with the Revolutionary Council of the Armed Forces". The Council abrogated the Constitution on April 28, and proceeded the next day to make a Decree whereby it "transferred all high State powers to the Revolutionary Council of the Democratic Republic of Afghanistan and merged itself in the latter Council".<sup>12</sup>

The Revolutionary Council (RC) met on April 30 and by its First Decree elected Mr. Noor Mohammad Taraki as its Chairman as well as the head of Government (Prime Minister). The Council elected Babrak Karmal as its Vice-Chairman at its second meeting on May 1. The Government was made "responsible" to the Revolutionary Council, and martial law remained in force throughout the country. A Cabinet was appointed with Mr. Babrak Karmal, Mr. Hafizullah Amin and Major Mohammad Aslam Watanjar as Deputy Prime Ministers. Mr. Amin was appointed Foreign Minister and Col. Abdul Qadir, Minister of National Defence.

The Revolutionary Council, Mr. Taraki said on May 6, consisted of "about 35 members" of whom five were from the armed forces but all, he emphasised, were members of the People's Democratic Party. "The Government and the Revolutionary Council are led by the Central Committee" of the PDPA. The Council had been "appointed by the Central Committee." Mr. Taraki was Secretary-General and "the head".<sup>13</sup>

On May 14 the Revolutionary Council issued Decree No. 3 to provide for the continuance in force of the pre-April 27 laws, with the exception of the Constitution, subject to their compatibility "with the aims of the DRA." It transferred the powers of the erstwhile Supreme Court to the High Judiciary Council which was made responsible to the Revolutionary Council.

A Revolutionary Military Court was also established on the same basis of accountability to the Council.

The regime was soon rife with dissension. In July Mr. Babrak Karmal and his *Parcham* followers were purged and sent abroad as Ambassadors. Mr. Karmal was sent to Prague. On August 19 it was announced that the Politbureau of the PDP's Central Committee had decided that Mr. Taraki should take over the Defence portfolio from Maj-Gen. Abul Qadir who had been arrested along with Lt-Gen. Shahpoor, Chief of Staff, on charges of plotting an overthrow of the Government.

Finally, on November 27, Mr. Karmal was expelled from the PDP along with eight others living abroad including envoys in the US, UK, Yugoslavia, Iran and Pakistan.

What followed in its wake was the ascendancy of Mr. Amin. In December he was named a Party Secretary along with Dr. Shah Wali both working under Mr. Taraki. On March 27, 1979, Mr. Amin was appointed Prime Minister as well as Vice-President of the newly set up Homeland Highest Defence Council. The law was later amended to make him "First Minister", instead.

The Revolutionary Council made a "Law for Regulating the duties of the Revolutionary Council and the Government and the Legislation Procedures" on February 26, 1979.<sup>14</sup> It was in the nature of an interim Constitution. On March 27 the Council adopted certain amendments to the Law.<sup>15</sup> It provided that the Revolutionary Council was the supreme state power. Its authorities and duties included approving the Constitution, issuing decrees, and conforming international treaties and agreements. Its decisions had to be by a two-thirds majority of those present, except when otherwise provided. By article 9 of the Decree, "The decisions of the Revolutionary Council shall be valid after the

approval of the President of the Revolutionary Council." The President of the Revolutionary Council was the head of state and supreme commander of the armed forces.

Under article 21, in cases not defined otherwise by the law, the decisions of the Council of Ministers were to be valid only "after the approval of the President of the Revolutionary Council".

From the outset, the Taraki regime made no secret of its intention to follow a different course in foreign policy from its predecessors. Mr. Taraki seemed emphatic on preserving the country's traditional non-alignment. "We maintain the non-alignment policy of our country and will never join any military pact."<sup>16</sup>

But the pro-Soviet leanings of the regime were candidly expressed. Asked by a correspondent of *Die Zeit* "A manifesto of your party, allegedly written last year, reads: 'The fight between international socialism and international imperialism, that has been waged since the Great October Revolution,' is 'the basic conflict of contemporary history.' Is this assessment in line with your ideology?" Mr. Taraki replied "I think this analysis is correct. That is the way it is. One camp is represented and headed by the Soviet Union, the other by America."<sup>17</sup>

After the Belgrade Conference of the Non-Aligned Foreign Ministers in June 1978, Foreign Minister Amin sharply criticised those who sought to "place the non-aligned movement, its natural friends and actual defenders, that is, the Socialist countries headed by the Soviet Union, on an equal footing with imperialism."<sup>18</sup>

Shortly after the Indian Foreign Minister A.B. Vajpayee's visit to Kabul in September 1978, Taraki explained his views on non-alignment. "We think in this field the socialist countries are the natural friends and sincere supporters of the non-aligned

countries, a view which may not be identical to that of India."<sup>19</sup>

A Treaty of Friendship, Goodneighbourliness and Cooperation between Afghanistan and the Soviet Union was signed in Moscow on December 5, 1978, by Mr. Taraki and Mr. Leonid Brezhnev.<sup>20</sup> Some of its provisions are quoted below:

Art. 1: "The high contracting parties solemnly declare their determination to strengthen and deepen the inviolable friendship between the two countries and to develop all-round co-operation on the basis of equality, respect for national sovereignty, territorial integrity and non-interference in each other's internal affairs.

Art. 4: "The high contracting parties, acting in the spirit of the traditions of friendship and goodneighbourliness, as well as the UN Charter, shall consult each other and take, by agreement, appropriate measures to ensure the security, independence, and territorial integrity of the two countries.

"In the interests of strengthening the defence capacity of the high contracting parties they shall continue to develop co-operation in the military field on the basis of appropriate agreements concluded between them.

Art. 5: "The Democratic Republic of Afghanistan respects the policy of peace pursued by the Union of Soviet Socialist Republics and aimed at strengthening friendship and co-operation with all countries and peoples.

"The Union of Soviet Socialist Republics respect the policy of non-alignment which is pursued by the Democratic Republic of Afghanistan and which is an important factor for maintaining international peace and security."

Article 4, it may be noted, is far different from and a weaker provision than Article VI of the Soviet-Vietnamese Treaty concluded only a month earlier, on Novem-

ber 3, which reads: "The High Contracting Parties will consult each other on all important international issues affecting the interests of the two countries. *In case one of the parties becomes the object of attack or of threats of attack, the high contracting parties will immediately begin mutual consultations for the purpose of removing that threat and taking appropriate effective measures to ensure the peace and security of their countries.*"<sup>21</sup> This treaty is closer to those concluded bilaterally between the USSR and East European countries.<sup>22</sup> According to Prof. Boris Meissner, "All bilateral alliance treaties in East Europe differ from the Warsaw Pact in that they envisage automatic assistance in the event of an armed attack."<sup>22</sup> The Treaty with Afghanistan contains no such obligation.

Early in 1979 reports of revolts within Afghanistan and exodus of refugees into Pakistan began to appear. While some of the rebels sought sanctuary in refugee camps in Pakistan, it is important to note that the rebellion had erupted within the country. According to Prof. Louis Dupree, "The first major uprisings occurred among the culturally distinct Nuristani ethnic group, north of Jalalabad, in eastern Afghanistan. By March 1979, the Nuristani rebels controlled most of the upper Kunar Valley and had actually declared an *Azad* (Free) Nuristan... Once the floodgates were opened, revolt – largely spontaneous and uncoordinated – spread to over half of Afghanistan's 28 provinces. Major disturbances occurred in Paktya, Ningrahar, Kapisa, Uruzgan, Parwan, Badghis, Balkh, Ghazni, Farah, and Herat. In Farah, rebels temporarily controlled a major air base at Shindand; and in Herat, rebels killed an undetermined number of Soviet technicians and their wives and children before army units loyal to the Khalq regime restored order."<sup>23</sup>

The rebel groups were hopelessly divided. The Ittehadī Inqilabi-Islami-Iua-Milli

Afghanistan (Islamic Nationalist Revolutionary Party of Afghanistan) led by Syed Ahmed Gailani is modernist and moderate in contrast to the rest.

On January 27, 1980, six of them formed an alliance called the "Islamic Alliance for the Liberation of Afghanistan". One group, *Hizbe Islami Afghanistan*, led by Mr. Gulbuddin Hekmatyar, however, broke away from the alliance in March 1980. Those in the alliance are: *Hizbe Islami*, led by Mr. Moammed Younus Khalis; *Jamait-e-Islami Afghanistan*, led by Prof. Burhanuddin Rabbani; Afghan National Liberation Front, led by Mr. Sibghatullah Mujaddidi; *Harkat Inquilab-e-Islami*, led by Maulavi Mohammed Nabi and the National Islamic Front of Afghanistan, led by Sayed Ahmed Gailani.

### *The Fall of Taraki*

On September 16, 1979 *Kabul Times* reported that the Plenum of the Central Committee of the People's Democratic Party of Afghanistan (PDPA) and the Revolutionary Council had accepted Mr. Noor Mohammed Taraki's resignations as General Secretary of the Party and President of the Revolutionary Council respectively quoting statements dated September 16 and 15 of the respective bodies. Mr. Hafizullah Amin had been unanimously elected to both these offices by the respective bodies, the daily added.<sup>24</sup> President Brezhnev and Prime Minister Kosygin congratulated Mr. Amin on his election.

The events which led to the announcement were widely reported in journals of international repute. The Afghanistan correspondent of *The Economist* reported that immediately after Mr. Taraki's return from the Havana Summit Conference of Non-Aligned Countries, after a stop-over in Moscow, Mr. Amin dismissed three Minis-

ters and purged Afghanistan's secret police. Two of the dismissed Ministers, Lieutenant-Colonel Watanjar and Major Mazdooryar, were particularly close to President Taraki.

"Mr. Amin had downgraded them in July, when he took over the defence Ministry from Colonel Watanjar, and since then had further consolidated his control over the armed forces. These changes had apparently caused concern to the Russians, who feared their effect on army morale. The Russians were also perturbed by the Government's failure to contain the rebellion that has broken out in several parts of the country...

"Summoned by President Taraki to explain himself, Mr. Amin was fired on as he was walking from the entrance of the palace to the President's office. Mr. Amin escaped, but his escort, the head of Mr. Taraki's office, was killed. Whether Mr. Taraki or someone else ordered the shots to be fired is not clear. Whoever did, they set off a gun battle in the palace between supporters of the two men which lasted sporadically until Saturday morning. At least half a dozen people were killed. Colonel Watanjar escaped and is reported to have joined a dissident army unit outside the capital. Major Mazdooryar died. President Taraki was badly wounded and, on some accounts, died not long afterwards."<sup>25</sup> Mr. Amin himself confirmed the facts of the shooting incident.<sup>26</sup> On his insistence the Soviet Ambassador Puzanov who had invited him to the President's house, was recalled in November.

Della Denman's report in *Guardian* gave the same version and some other details. "The Parcham leaders are believed to be in eastern Europe possibly waiting to be recalled by the Russians. Mr. Taraki apparently met Babrak Karmal, the Parcham leader, in Moscow on his return from Havana in early September... Soviet influence in the armed forces has increased and the diplomats are

confident in their belief that the Soviet Union controls the Air Force. The important armoured corps based at Pule Charki on the edge of Kabul is also believed to be outside Mr. Amin's control."<sup>27</sup>

By early December Russian involvement had increased to an alarming degree. Mr. Barry Shlachter of *Associated Press* reported that Soviet personnel had taken over Shindand Military Air Base in Herat province. They were already in control of Bargram Air Base near Kabul. Between 3,500 and 4,000 Soviet military advisers were in Afghanistan according to some estimates.<sup>28</sup>

### *The Soviet Intervention*

On December 26 the US State Department's spokesman, Mr. Hodding Carter, revealed that "on December 25-26 there was a large-scale Soviet airlift into Kabul International Airport, perhaps involving over 150 flights. The aircrafts include both large transports (AN-22's) and smaller transports (AN-12's). Several hundred Soviet troops have been seen at the Kabul Airport and various kinds of field equipment have been flown in." He remarked "It appears that the Soviets are crossing a new threshold in their military deployments into Afghanistan."<sup>29</sup>

The events of December 27 were fully reported by correspondents based in Kabul. One of them, by Mr. William Branigin, bears quotation *in extenso*: "On the night of December 27 at about 7.30, a loud explosion at the telecommunications building knocked out most internal and external telephone and telex facilities. It appeared to be the signal for the start of the coup. Immediately Soviet troops assaulted the radio and television station next to the US Embassy, the People's House presidential palace, and Darulaman Palace where Amin had just set up residence.

"At the same time as the coup, Soviet divisions, massed on their side of the border, came pouring across in a three pronged move. A column crossed the border at Torghundi and seized the provincial city of Herat. Another swept across and took Mazar-Sharif and the third came down the Kunduz Valley north of Kabul.

"The Soviet strike force, spearhead by light tanks that had been airlifted, was made up of no more than two or three battalions, sources said. By most accounts, it encountered unusually strong resistance from Afghan troops guarding the building. Casualties on both sides were considerable, sources said. One figure mentioned is roughly 25 Russians killed and 225 wounded with substantially higher tolls on the Afghan side.

"While the fighting was going on, an odd thing happened that may have meant a wrinkle in the Soviet planning. A senior diplomatic envoy said that, at 8.30 p.m. Kabul time, he was listening to *Radio Moscow* and heard a taped speech by Babrak Karmal announcing the ouster of Amin and his own accession to power.

"The fighting in Kabul to depose Amin did not end until about 11 p.m. local time, however, and the speech by Mr. Karmal was broadcast on Kabul Radio sometime afterward. Residents here are sure that the announcement was taped - it was repeated later in the same words and tone - and that Mr. Karmal was not yet in the country.

"Sources here said that he flew in the next day on a Soviet transport plane from Moscow. He reportedly went to the Soviet capital shortly before the coup after living in exile in Prague, where he briefly had served as the Afghan Ambassador until resigning to avoid a purge by Amin. In any case, Mr. Karmal was not seen locally until the night of January 1 when he made a speech on television.

"In addition to the whereabouts of Mr.

Karmal, another aspect of the operation pointing to the Soviet installation of hand-picked Government officials is the case of four men who had sought refuge months earlier in the Soviet Embassy in Kabul to avoid arrest by Amin. All four were flown to Moscow and then reappeared in Kabul as Government Ministers and Revolutionary Council members after the coup.<sup>30</sup>

### *The Legality of the Soviet Intervention*

The legality of the entry of Soviet troops in Afghanistan hinges very largely on the factum and legality of the request for such intervention which is claimed to have been made by the Afghan authorities.

The repeated Soviet and Afghan references to the request reveal an awareness of its importance in this context. All the greater reason why the particulars of the request should have been revealed unambiguously and at the very earliest. The record shows studied ambiguity at the initial stage and contradictory and intrinsically implausible explanations thereafter. What is more, the first announcements were made in highly suspicious circumstances.

The first announcement of the coup was made from transmitters in the Soviet Union. Mr. Babrak Karmal's broadcast appealing for support was heard in Kabul from Termez on the Soviet side of the Oxus. *It was heard in Iran at 16.15 hrs GMT on December 27.* Teheran Radio reported the appeal at 16.30 hrs GMT, attributing it to *Radio Kabul*. Monitoring of *Kabul Radio's* home service confirmed that it appeared to be broadcasting normally without any indication of a change of leadership.

At 19.45 hrs GMT Tass transmitted the text of Mr. Karmal's appeal. It was repeat-

ed on *Moscow Radio's* home service at 19.53 hrs GMT and at 21.00 hrs on *Moscow's* external services in English, Arabic and Italian. At 20.30 hrs, *Moscow Radio's* Serbo-Croat Service stated that "the anti-popular regime of Hafizullah Amin has been liquidated."

At 22.10 hrs GMT on December 27 (2.40 hrs local time, December 28) *Kabul Radio's* home service began transmitting a list of the leaders of the new Revolutionary Council; an announcement by a "Revolutionary Tribunal" that Mr. Amin had been executed; and, an announcement at 22.25 hrs GMT by the Government of the Democratic Republic of Afghanistan that, on the basis of the Afghan-Soviet Treaty of 1978, it had requested the USSR to render urgently political, moral and economic assistance, including military aid, and that the Soviet Government had agreed to do so.

This was nine hours after Soviet troops had commenced operations and four days after they had entered Afghanistan. On December 28 an official Indian spokesman stated: "According to the Indian Embassy in Kabul, the Soviet troops had been moving in Afghanistan, including the Kabul area, as early as December 24; both infantry and armoured troops were identified."

It is also important to note that the Soviet Ambassador Mr. Yuri Vorontsov met the Indian Foreign Secretary, Mr. R.D. Sathe, on December 27 at 23.15 hrs (Indian Standard Time = 17.45 GMT = 22.15 Kabul Time) and informed him of the Afghan request and positive Soviet response but *not* of the coup.<sup>31</sup>

The text of *Radio Kabul* broadcast as reported in an official Soviet publication read as follows: "Radio Kabul transmitted on December 28, 1979, the following statement of the Government of the Democratic Republic of Afghanistan: 'Taking into account the continuing and broadening interference and provocations of external ene-

mies of Afghanistan, and with a view to defending the gains of the April Revolution, territorial integrity and national independence, and maintaining peace and security, the Government of the Democratic Republic of Afghanistan, proceeding from the Treaty of Friendship, Good-neighbourliness and Co-operation of December 5, 1978, approached the USSR with an insistent request for giving urgent political, moral, and economic aid, including military aid, for which the Government of the Democratic Republic of Afghanistan had previously repeatedly turned to the Government of the Soviet Union. The Government of the Soviet Union has acceded to the request of the Afghan side'.<sup>32</sup>

The terms clearly suggest soviet response to a request by the Karmal regime, not to the regime which had "previously turned" to the Soviet Government. It was, moreover, a request by the Afghan Government, not by the Revolutionary Council.

This impression was fortified by Mr. Aleksey Petrov's article entitled "On Events in Afghanistan" in *Pravda* of December 31. It attacked Mr. Amin as a usurper, lauded his removal and said, "In the obtaining circumstances the Afghan Government made again an insistent request that the Soviet Union should give immediate aid and support in the struggle against external aggression. The Soviet Union decided to grant this request and to send to Afghanistan a limited Soviet military contingent..."<sup>33</sup> (emphasis added throughout). Mr. Petrov cited specifically Article 4 of the Treaty of 1978 and Article 51 of the UN Charter in support of the Soviet Union.

*Kabul Times* resumed publication on January 1, 1980 in the new name of *Kabul New Times* under a new editor, Mr. Rahim Rafat. It published eight documents (1) Mr. Karmal's broadcast speech announcing that the Revolutionary Council had "regained political power." (2) The Council's state-

ment on December 27 appointing Mr. Karmal, General Secretary of C.C. "of the single PDPA," President of the R.C. and C-in-C of the armed forces. (3) The Party and the Council's greeting to the people. (5) The Central Committee's statement. (6) An undated statement of the R.C. which read as follows:

"Hafizullah Amin was executed, due to the crimes he had committed against the noble people of Afghanistan, by the Revolutionary Tribunal consisting of many representatives of the people, ranging from civil and military party activists, those of Moslem clergy, intelligentsia, workers and peasants, and the verdict passed by the Revolutionary Tribunal was carried out forthwith.

"Babrak Karmal, General Secretary of the PDPA CC, President of the RC and Prime Minister of DRA..." was declared to be a member of the Praesidium of the Revolutionary Council and the highest executive authority of the government.

There were, besides, a policy statement and the Government's statement on Soviet aid, "... in the past too, the State of Afghanistan had sought, several times, such aid from the Soviet Union. Now, the State of Union of Soviet Socialist Republics has responded, with full concurrence to this request and demand of the DRA State."<sup>34</sup>

At a press conference, on January 10, Mr. Karmal was more explicit: "Associated Press Q: 'As an agent of American imperialism, as you said earlier, why did Amin invite Soviet troops to Afghanistan?'"

A: "Hafizullah Amin, the agent of American imperialism, had *not* asked the Soviet Union for its limited contingents. The request had been made almost unanimously by the Revolutionary Council of the Democratic Republic of Afghanistan."<sup>35</sup>

In his *Pravda* interview, in January, Mr. Brezhnev studiously avoided giving details of the request. But he clearly implied that

his Government had responded after Mr. Amin had been overthrown. "The time came when [the USSR] could not but respond to the request of the Government of friendly Afghanistan."<sup>36</sup>

There were indications already, however, of contradictory explanations by the Soviet Government. India's Ambassador to the UN, Mr. B.C. Mishra, told the General Assembly on January 12, on instructions from the incoming Government headed by Mrs. Indira Gandhi, "The Soviet Government has assured our Government that its troops went to Afghanistan at the request of the Afghan Government, first made by President Amin on December 26, 1979 and repeated by his successor on December 28, 1979."<sup>37</sup>

On February 1 *Radio Peace and Progress* broadcast the same line. Mr. Amin had asked for Soviet help and "was deposed immediately after Soviet forces entered Kabul."<sup>38</sup> Variations on the theme soon began to appear. In an interview with an Indian daily Mr. Karman claimed, "he had secretly reached Afghanistan from Europe after Taraki's martyrdom and 'organised the kind of connection necessary for establishing unity of the party.' He then contacted a majority of members of the PDPA Central Committee and the Revolutionary Council to make them aware of the dangerous scheme.

"He said that in the second week of December an overwhelming majority of members of the PDPA Central Committee and the Revolutionary Council exerted pressure on Amin to make an 'urgent request for Soviet military assistance'. Faced with this pressure, Amin was forced to accept the proposal since refusal to accept it would have only exposed him. In was in this setting, he said, that 10 days before December 27, Soviet troops entered Afghanistan in compliance with the request by a majority of the PDPA Central Committee and Revolu-

tionary Council members." He said that before December 27 the PDPA Central Committee and the Revolutionary Council had tried Amin and decided to execute him. They also elected him (Mr. Karmal) as general secretary of the PDPA Central Committee, president of the Revolutionary Council and the country's prime Minister."<sup>39</sup>

That there was lack of co-ordination became evident from the remarks of the Soviet Ambassador to Japan, Dmitriy Polyansky, to *Asahi Shimbun* on March 7, according to whom total of 14 requests had been made, "four of them in December. The introduction of Soviet Army troops (sic) actually began on December 24. The last request asking that the pace be further accelerated was made on December 26."<sup>40</sup>

On the other hand, Mr. Karmal, in an interview with the Paris-based Lebanese journal *Al-Watan Al-Arabi* published on March 7 said, "We (the majority of the RC) asked the Soviet Union to send limited military units to Afghanistan. The new stage of the revolution began, as you know, on the 27th of last December. We submitted our request to our Soviet friends 10 days before the beginning of the new stage of the April Revolution. The political leadership of the country reaffirmed and approved this request after 27 December."

Mr. Karmal charged Mr. Amin with being in league with the CIA and attributed to him a "scheme" of "physical liquidation" of party members. "The crux of the scheme was as follows: On 27 December, which was the day when the Soviet forces moved to overthrow Amin, the operation was to begin to exterminate all party members..."<sup>41</sup> (emphasis mine).

Mr. Karmal, however, gave an altogether different version to Mr. Mostafa Danesh of *Der Spiegel*. "... Amin was forced, a few days prior to 27 December through pressure of the majority of the Revolutionary



Council and the Central Committee, to ask the Soviet Union for limited troop contingents against an aggression that could take place any moment from Pakistan. *Without my personal knowledge concerning that request, and without an opportunity to bring influence to bear, the Soviet military units came to Afghanistan.*"<sup>42</sup>

Mr. Karmal's statements on the vital detail of his return to Afghanistan were no less contradictory:

- January : "I returned two months ago."<sup>43</sup>  
February : "Secretly reached Afghanistan from Europe after Taraki's martyrdom."<sup>44</sup>  
February : "I entered Afghanistan four months prior to December."<sup>45</sup>  
March : *Der Spiegel*: "On what day, exactly, did you return to Afghanistan?  
Karmal: 15 days after Nur Mohammed Taraki had been killed."<sup>46</sup>

It is, perhaps, ironical that Mr. Amin should have come to grief through tactics which he did not hesitate to approve when they were practised in Czechoslovakia. Asked on May 11, 1979 about the presence in Afghanistan of General Epishev who had led Soviet troops into Czechoslovakia in 1968, Mr. Amin replied, "It was on the demand of the Soviet people."<sup>47</sup>

The observations of the UN Special Committee on Hungary on this point are most apposite. "The act of calling in the forces of a foreign State for the repression of internal disturbances is an act of so serious a character as to justify the expectation that no uncertainty should be allowed to exist regarding the actual presentation of such a request by a duly constituted Government."<sup>48</sup>

No such clarity is to be found in the instant case. Soviet and Afghan statements

are hopelessly contradictory, when they are not vague, as to the person and the authority who made the fateful request and the date on which it was made. In this context, it is important to bear in mind that under Article 9 of the Law on the Revolutionary Council, Mr. Amin's free consent was indispensable to a valid request.

The terms of Article 4 of the Treaty, as we have noted, do not sanction Soviet intervention either. Nor does Article 51 of the UN Charter on which Soviet and Afghan spokesmen rely. It provides: "Nothing in the present Charter shall impair the inherent right of individual self-defence if an armed attack occurs against a Member of the United Nations until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

In his *Pravda* interview Mr. Brezhnev alleged that "thousands and ten thousands of insurgents, armed and trained abroad, whole armed units, were sent into the territory of Afghanistan. In effect, imperialism together with its accomplices launched an undeclared war against revolutionary Afghanistan." There is not a shred of evidence in support of this charge. Such help as the rebels have received has been fully reported. It is nowhere near this dimension.<sup>49</sup> The uprising is essentially a domestic one. Mr. Brezhnev's version is also contradicted by Mr. Karmal's version according to which "the scheme" formulated by Mr. Amin, in complicity with the US and Pakistan, was in two parts; one concerned the liquidation of party members and the

other, external attack in the future in contrast to Mr. Brezhnev's charge of a present and long existing war: "According to reliable information that we received, the second stage of the scheme was as follows: It was expected that about 60,000 mercenaries, who are being trained in 50 camps in Pakistan territories, would infiltrate Afghan territories and establish bases in the border region."<sup>50</sup>

In any event the Soviet action is indefensible as an exercise of the right of self-defence. The *locus classicus* on the subject is the US Secretary of State Webster's observation on April 24, 1841 in the Caroline incident in 1837. There must exist, he said a "necessity of self-defence, instant, overwhelming, leaving no choice of means and no moment for deliberations." Moreover, the response to the attack must be proportionate to the threat which the attack represents.<sup>51</sup>

If, then, the pleas of "request" and "self-defence" are groundless in fact and in law, the conclusion is inescapable that the Soviet action is violative of the UN Charter (Art. 2(4)) and of a series of resolutions of the General Assembly defining the rights and duties of States some of which were ardently espoused by the Soviet Union itself.

The Soviet action clearly violates the following Resolutions of the General Assembly

- (1) 290 (IV) on the Essentials of Peace, December 1, 1949 Paras 2 and 3.
- (2) 380 (V), Peace through Deeds, November 17, 1950.
- (3) 2131 (XX) on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty: December 21, 1965, para. 1.
- (4) 2160 (XXI) on Strict Prohibition of the Threat or Use of Force in International Relations, and the Right of Peoples to Self-determination, November 30, 1966, para (a).
- (5) Declaration of Principles of International Law concerning Friendly Relations and Co-operation

- among States in accordance with the Charter, Res. 2625 (XXV), 24 October 1970.
- (6) 2734 (XXV), Declaration on the Strengthening of International Security; December 16, 1970.
- (7) 31/91, Non-interference in internal affairs of States, December 14, 1976.
- (8) 32/55, Declaration on the Deepening and Consolidation of International Detente, December 19, 1977.
- (9) 34/103, Inadmissibility of the policy of hegemonism in international relations, December 14, 1979.

Finally, it constitutes aggression as defined in Resolution 3314 (XXIX) adopted by the Assembly without a vote on December 14, 1974 as well as in the Convention for the Definition of Aggression of 1933. Article 5 of the Definition says that "No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression." The Appendix to Article 3 of the Convention explicitly declares that "counter-revolutionary movements and civil war" cannot be used to justify aggression.

The proceeding in the United Nations revealed an overwhelming consensus in rejection of Soviet pleas and in support of Afghanistan's independence.<sup>52</sup> On January 3, 52 countries requested an urgent meeting of the Security Council (S/13724) to consider the situation in Afghanistan. Afghanistan protested, contending that the request constituted an interference in its internal affairs (S/13725). The Council deliberated on January 5, 6 and 7. Besides its 14 members, 32 others spoke in the debate. On January 6, a draft resolution (S/13729) was introduced. It was vetoed by the Soviet Union the next day. The Council proceeded, on January 9, to adopt Resolution 462 (1980) calling for an emergency special session of the Assembly in accordance with the Uniting for Peace Resolution 377A(V) of November 3, 1950.

In the Assembly, which met the next day, Pakistan introduced, on January 12, a resolution sponsored by 24 countries from the Third World. The resolution (E S-6/2) was adopted on January 14 securing 104 votes in favour, 18 against, 18 abstaining, and 12 absent or not voting. The Resolution (1) "reaffirms that respect for the sovereignty, territorial integrity and political independence of every State is a fundamental principle of the Charter of the United Nations, any violation of which on any pretext whatsoever is contrary to its aims and purposes" (2) "Strongly deplores the recent armed intervention in Afghanistan, which is inconsistent with that principle; and (4) "Calls for the immediate unconditional and total withdrawal of the foreign troops from Afghanistan in order to enable its people to determine their own form of Government and choose their economic, political and social systems free from outside intervention, subversion or coercion or constraint of any kind whatsoever." It bears recalling that neither the Afghan Foreign Minister Mohammed Dost nor the Soviet delegate Oleg Troyanovsky had contended in the debates that Soviet troops had entered Afghanistan at Mr. Amin's instance.

Far from complying with the Assembly's resolution, the Soviet Union proceeded to conclude with Afghanistan "a treaty on the terms of the temporary stay on Afghan territory of the limited Soviet military contingent." The treaty was negotiated, presumably, on March 13-14 when Foreign Minister Dost visited Moscow. On April 4 announcements of its ratification were made by both sides.<sup>53</sup> The text of the treaty has not been published, contrary to precedent.<sup>54</sup>

### *The Revolutionary Council's 'Fundamental Principles'*

The Afghan Council of Ministers set up

on March 1 a Commission "to prepare the provisional basic principles of the Democratic Republic of Afghanistan." On April 14 the Revolutionary Council adopted the Fundamental Principles. Divided in 10 Chapters, the principles constitute the interim Constitution. They came into force on April 21.<sup>55</sup>

The document speaks of "decisive observance of the principles of Islam as a sacred religion, respect to the Universal Declaration of Human Rights..."

It defines (ch. 2) the Fundamental Rights and Obligations of Citizens. Art. 29 (7) embodies "the right to freely and openly express one's opinions, the right of assembly and of peaceful demonstrations and likewise the right to patriotically join democratic and progressive social organisations."

"The extent of the advantage taken of the above rights will be defined by law commensurate with social order and national security and tranquility."

Article 35 says "Loya Jirga, the Supreme Council, is the highest organ of state power of the Democratic Republic of Afghanistan. The composition of Loya Jirga, the completely democratic method in which delegates of the peoples of Afghanistan are elected, its authority and activities are defined by law.

"Delegates of the peoples to Loya Jirga are elected on the basis of general, free, secret, direct and equal ballots. In its first session, the Loya Jirga will adopt the constitution of the Democratic Republic of Afghanistan. Election time for the Loya Jirga delegates will be fixed and announced by the Revolutionary Council." But, Art. 36 provides, "Until conditions are ripe for free and secure election of delegates to the Loya Jirga, the Supreme Council, the Revolutionary Council will act as the highest organ or state power in the Democratic Republic of Afghanistan." A smaller body,

the Presidium, will exercise the powers of the Council between two sessions. The President of the R.C. is empowered (Art. 45) to "endorse laws, decrees, decisions and other documents of the Revolutionary Council, its Presidium and the Council of Ministers."

The Supreme Court is the highest judicial organ but is responsible to the R.C. (Art. 55). The Principles, therefore, do not guarantee the independence of the judiciary nor protection of the rights which are constricted by widely worded qualifications (Art. 29(7)).

How little dissent even within the Establishment is tolerated became clear when the editor of the official organ of the PDPA *Haqeeqat-e-Inqilab-e-Saur* was arrested because the April 5 issue contained an article and a cartoon criticising Taraki.

The *Associated Press* reported on May 12, "Kabul is in bitter mourning over the killing of more than 150 schoolboys and girls in recent demonstrations, and their deaths have sparked anti-Soviet protests and raids in provincial towns and villages, according to reports from Afghanistan reaching here (New Delhi) over the weekend... Earlier information from Kabul said 156 young demonstrators were killed in encounters with Soviet troops and that others who were wounded later died at their homes."<sup>56</sup>

As fierce fighting raged in the country, reports began to appear of the use of poison gas by Soviet troops. Peter Niesewand of the *Guardian* found no evidence in support of the charge. But, he added, "there is no doubt that the Soviets are using crowd-control gas of some kind, rather as the United States did in Vietnam with CS nauseous gas. From personal accounts, the Russian tactic appears to be to fire gas canisters from low-flying helicopters into villages or rebel encampments, and then send in waves of troops when many of the people are disabled or unconscious."<sup>57</sup>

However, a *Press Trust of India* correspondent reported that observers in Kabul "have conclusive evidence that napalm (jellied gasoline) has been used against the Afghan rebels, and that, notwithstanding Soviet denials, observers insist that chemical gas has been used by Russians in anti-insurgency operations. But the gas used has caused only inertia and not fatal or debilitating injuries.

"The effect of the gas is said to last for four to six hours, enough to lead to arrest and disarming of insurgents. Gas has also helped to avoid mass killings in fighting or combing operations."<sup>58</sup>

By May 1980 about 600,000 Afghan refugees had crossed into Pakistan.<sup>59</sup> The situation is full of explosive possibilities. Soviet forces inside Afghanistan are estimated to exceed 100,000.<sup>60</sup>

A question which has received little attention is the applicability of the Geneva Conventions of 1949. It arose earlier in similar situations.<sup>61</sup> They are applicable to armed conflicts "not of an international character". Article 3, which is common to all the Geneva Conventions, provides

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence of life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples."

Kabul Radio announced that nearly 100 persons, a majority of them students, arrested during the anti-Government demonstrations in Kabul on May 3, would be tried by the Afghan revolutionary courts.<sup>62</sup>

The statute setting up these courts is not available. The Basic Principles recog-

nise the principle of presumption of innocence, the right to defend, and the principle that "nobody could be accused of an offence except under provisions of laws" (Art. 30). Adherence to these principles in the absence of guarantees of judicial independence can be an uncertain process at best.

It is a grim situation. Afghanistan's independence has been violated. It is under the virtual occupation of the Soviet army. The basic human rights of its citizens have been taken away.

### Footnotes

- (1) See *The Hungarian Situation and the Rule of Law*, International Commission of Jurists, 1957; Report of the Special Committee on the Problem of Hungary, General Assembly Official Records, Eleventh Session Supplement No. 18 (A/3592); and, *The Czech Black Book* edited by Robert Littell, Praeger, New York, 1969.
- (2) Eden Naby, the Ethnic Factor in Soviet-Afghan Relations, *Asian Survey*, March 1980, The University of California pp. 239-240. A most informative essay.
- (3) Treaty Series No. 19 (1922); Cmd. 1786.
- (4) Milestones of Soviet Foreign Policy 1917-1967, Progress Publishers, Moscow, 1967, p. 48.
- (5) R.C. Ghosh, Constitutional Developments in the Islamic World, Shaikh Muhammad Ashraf, Lahore, 1941, p. 188.
- (6) Ghosh, op. cit., pp. 207-220.
- (7) Keith, *Speeches and Documents on International Affairs 1918-1937*, Vol. I, pp. 280-282, Oxford University Press, 1938.
- (8) The anthropologist Mrs. Louis Dupree who has lived for long periods in Kabul and is a noted authority on the country has written an able survey, *Afghanistan Under the Khalq*; Problems of Communism, USICA, Washington D.C. July-August 1979.
- (9) Dupree p. 34.
- (10) *The Economist*, May 6, 1978 and *The Washington Post*, May 13, 1979. "The unusually effective precision bombing of key targets during the critical moments of the fighting strongly suggested the use of Soviet pilots", Mr. Harrison remarked in *The Post*.
- (11) The writer is greatly indebted to a digest of Afghan (and also Pakistan and Bangladesh) press published from New Delhi entitled *Public Opinion Trends Analyses & News Service* Vol. III, Part 65, November 7, 1978 for the text of the booklet as serialised in *Kabul Times*. This publication is hereafter cited as "POT".
- (12) POT, Vol. II, Part 19, May 9, 1978, for the texts of the Decrees.
- (13) POT, May 16, 1978.
- (14) *Kabul Times*, March 20, 1979.
- (15) *Kabul Times*, March 28, 1979.
- (16) POT, May 16, 1978.
- (17) Foreign Broadcast Information Service, Middle East, June 9, 1978. This publication is hereafter cited as FBIS.
- (18) POT, August 22, 1978.
- (19) POT, September 26, 1978.
- (20) POT, December 12, 1978.

- (21) *Soviet Review* (SR), Embassy of the USSR in India, November 23, 1978, p. 56.
- (22) Aussen Politik, Hamburg, No. 3 of 1979, p. 291.
- (23) Dupree, op. cit., p. 44.
- (24) POT, September 21, 1980.
- (25) *The Economist*, September 22, 1979.
- (26) POT, November 27.
- (27) *Guardian*, October 29, 1979.
- (28) *International Herald Tribune*, December 7, 1980.
- (29) Press Release, USICA, December 27, 1979.
- (30) *Guardian Weekly*, January 6, 1980. See also *The Economist*, January 5, 1980.
- (31) *The Times of India*, December 29, 1979.
- (32) *Soviet Review*, No. 1, 1980, p. 26.
- (33) *Soviet Review* No. 1, 1980, 9.35.
- (34) POT, January 5, 1980.
- (35) POT, January 18, 1980.
- (36) *Soviet Review*, January 17, 1980.
- (37) *The Hindustan Times*, January 13, 1980.
- (38) FBIS, February 80, USSR.
- (39) *Patriot*, February 7.
- (40) FBIS, March 11, USSR (Annex).
- (41) FBIS, March 12, Middle East & N. Africa Annex.
- (42) FBIS, April 2, Afghanistan.
- (43) POT, January 18.
- (44) *Patriot*, February 7.
- (45) *Al-Watan Al-Arabi*, March 7.
- (46) *Der Spiegel*, March 31.
- (47) POT, May 9, 1979.
- (48) General Assembly O.R., 11th session Supplement No. 18 (A/3592).
- (49) *The Economist*, January 5, 1980.
- (50) FBIS, March 12.
- (51) British and Foreign State Papers 1129, 1138 and *The Events in East Pakistan, 1971*, a legal study by the Secretariat of the International Commission of Jurists, 1972, pp. 89-90.
- (52) U.N. Chronicle, March 1980, Vol. XVII, No. 2, U.N.D.P. 1.
- (53) FBIS, Afghanistan, April 7.
- (54) For texts of similar treaties with Hungary (May 27, 1957) and Czechoslovakia (October 16, 1968) vide UN Special Committee Report p. 60 and *Soviet Review*, October 26, 1968, respectively.
- (55) POT, April 22 for the full text.
- (56) *The Times of India*, May 13, 1980.
- (57) *Guardian Weekly*, April 27.
- (58) *The Times of India*, April 28.
- (59) *The Times of India*, May 6.
- (60) *The Statesman*, May 14.
- (61) *The Hungarian Situation and the Rule of Law*, ICJ, 1957, p. 56; Report of the Special Committee on Hungary, 1957, p. 129; *The Events in East Pakistan, 1971*, ICJ, 1972, p. 53.
- (62) *The Hindustan Times*, May 14, 1980.

# *The Trial of the Turkiye Emerkci Partisi (Turkish Workers' Party) Before the Constitutional Court of Turkey*

by  
Manfred Simon\*

## *Introduction*

As with many human affairs, this trial ought to be viewed with regard to the political, social and economic situation of the country where it took place.

It may be recalled that modern Turkey was created by Kemal Atatürk, the leader who, after the first world war, successfully resisted the Allies' attempts to dismember his country. Thanks to his victories, inter alia against the Greeks, the humiliating Treaty of Sévres was replaced in 1923 by the Treaty of Lausanne. The latter contained special provisions aiming at protecting the religious and civil rights of non-muslim minorities such as Greeks and Jews, provisions which have been respected by successive Turkish governments. Muslim ethnic minorities, such as the Kurds, were left without protection. Their problems, within the framework of the Turkish State, constitute part of the background of this trial.

Atatürk remained president of the Turkish Republic until his death in 1938. Spectacular reforms, such as the laicisation of the State, the granting of equal rights and status to women, the creation of an administration based on European models, were

only partly successful. In certain provinces of the country, e.g. those inhabited by the Kurds, a semi-feudal system still seems to prevail; the big landowners and the clergy being predominant, local administrators are compelled to take these factors into account. The same applies to members of the Turkish Parliament, regardless of their political affiliation, while a powerful military establishment purports to preserve the democratic constitution inherited from Atatürk.

Economically speaking, Turkey is a semi-industrial nation with cold winters, hot summers, insufficient water-supply, a steppe-like vegetation, except in the coastal regions where the majority of the population is concentrated.

The principal agricultural products are wheat, barley, tobacco, fruit, cotton. Meat is supplied by a substantial stock of beef and sheep, the latter furnishing the raw material for the famous Turkish carpets. The subsoil contains resources such as coal, oil, chrome, copper, but these have not yet been fully exploited. Basic infrastructure (railways, roads) exists, but needs further development. A high birthrate adds to the problems the country has to face, amongst

---

\* Honorary President de Chambre of the Court of Appeal of Paris.

which a constant deficit of the balance of trade and payments, partly overcome by massive loans granted by the Western nations for strategic reasons.

Socially speaking, the majority of the population lives in very modest conditions. This, together with the existence of important ethnic minorities, such as the Kurds, (there are said to be between 3 & 5 million of them within Turkey) and overcrowded cities such as Istanbul and Ankara, give rise to much social and political unrest. The State tends to protect its cohesion, an essential condition for continued Western financial and economic support, less by reforms than by applying a penal legislation of which numerous provisions appear incompatible with fundamental principles of human rights.

Following an army coup d'état in 1960, a new constitution was adopted on May 26, 1961, which has generally been considered a liberal one. Its article 2 states: "The Turkish Republic is a national, democratic, secular and social state governed by the Rule of law based on human rights and the fundamental tenets set forth in the Preamble." Article 11 lays down: "The fundamental rights and freedoms shall be restricted only by law in conformity with the letter and spirit of the Constitution. The law shall not infringe upon the essence of any right and liberty, not even when it is applied for the purpose of upholding public interest, morals and order, social justice, or national security."

On September 20, 1971 amendments, generally restrictive in effect, were adopted. Thus the title of article 11 now reads "Essence and restriction of fundamental rights and their protection" and its wording declares that fundamental rights and freedoms may be restricted "... with a view to safeguarding the integrity of the state..." and that "... None of the rights and freedoms... be exercised with the intention of destroy-

ing... the indivisible integrity of the Turkish state with its territory and people... through recourse to differences of language, race, class, religion or sect..."

The judicial system bears some resemblance to French institutions. Thus the supreme court is a Court of Cassation, and a Council of State is the highest judicial body in administrative disputes. The 1961 Constitution added a Constitutional Court having jurisdiction concerning the constitutionality of legislative enactments. As will be seen later it is also exclusively competent in all matters relating to political parties, including their dissolution.

Such is the political, economic, social and judicial background of the case against the Turkish Workers' Party (TEP) and its principal leader, Mr. Mihri Belli.

### *The TEP, Its Programme and Its Leader, Mihri Belli*

The party was founded early in 1975. According to Mr. Belli's statement at a hearing of the Constitutional Court on 26 February 1980, it advocates a "national democratic revolution" guaranteeing freedom and equality for all members of the Turkish society without discrimination because of race, religion or language; under the supervision of the Ministry of Education, the right to be educated in one's mother tongue; the nationalisation of the "citadels of the capitalist collaborationalist class", and suppressing the "exploitation" of poor peasants by feudal landlords. To achieve these ends, the party will act within the framework of the rights and freedoms granted by the Constitution. All international conventions inconsistent with national independence will be denounced and foreign undertakings and those owned by "collaborators" will be nationalized to further these aims. The party will apply



articles 10–34 of the Constitution. These refer in the main to fundamental rights and freedoms, the rule of law, the right to privacy, the inviolability of the home, freedom of expression, of thought, of movement, of science and art, of the press, of assembly and association, protection against arbitrary arrest, and the right to a speedy and fair trial by one's natural judges.

The party further advocates the distribution of the national product in accordance with the contribution of each citizen; a standard of life compatible with the dignity of the individual and in accordance with articles 41, 43 and 44 of the Constitution (full employment, right to work and right to leisure).

Mr. Mihri Belli, the TEP's leader, was born on 16 December 1915 in a small town on the European coast of Turkey. His father was a lawyer having served first as a public prosecutor and later as a member of the Bench. A reserve officer of the Turkish army, he joined Kemal Attatürk, was elected to the Turkish Parliament in 1919, became chairman of the bar association of Edirne, a Turkish township, and finally legal advisor to the Ministry of Agriculture.

Mr. Mihri Belli obtained a Master's degree in economics at the University of Missouri. From 1936–1940 he lived in the United States where he was active in various social movements such as the Share Croppers Union and the Sailors Union of the Pacific in San Francisco.

Between May 1940 and the end of 1942, he served as a cavalry officer in the Turkish Army. After his discharge from the army he was appointed assistant professor of economics at the University of Istanbul, where he organized "The Union of Young Progressists" which purported to continue the "anti-imperialist and anti-feudal tradition of Kemal Attatürk". In the autumn of 1944, Mr. Belli with 50 of his comrades was sentenced to two years imprisonment

and exile by the "Tribunal of the State of Siege". He moved to Paris where he joined the Greek revolutionary movement EAM and fought in their ranks during the civil war until their defeat in 1949, when he returned to Turkey. In 1951, he was again arrested on the charge of being a member of the clandestine Turkish Communist Party. He was sentenced to 7 years imprisonment. After ten years in prison and in exile, (1951–1960) he came to the conclusion that to win the Turkish workers' support all links with the Soviet Union had to be severed. Thanks to the liberal Constitution of 1961 he was able to advocate his party's doctrine by speech and in writing, by publishing a weekly "Türk Solu" (Turkish Left) and a monthly "Azdinlik" (Clarity), advocating a "strategy of the national democratic revolution".

The conservative revolution of 1971, Mr. Demirel being head of the government, forced him into exile for another two years. He returned in 1974 after the victory of the more liberal Ecevit party and the consequent vote of an amnesty, interpreted by the Constitutional Court as applying also to political prisoners.

### *The Trial*

The trial went through different stages, the Court of Assizes, the Court of the State of Siege, the tribunal of conflicts and the Constitutional Court.

### *Proceedings Before the State Security Court and Other Tribunals*

The TEP was founded in February 1975. Its bylaws and programme as outlined above were submitted to the Ministry of the Interior, as prescribed by law. The Ministry instructed the Procurator General to

lodge a complaint with the State Security Court against Mihri Belli and other leaders of the TEP for violation of sections 141, paras. 1 and 3, of the penal code, which read as follows:

- "1. All those who create, direct or inspire associations with the object, under whatever name it may be, to ensure the domination of one social class over another, or to suppress a social class, or to overthrow a fundamental economic or social institution existing in the country, are punishable with from 5 to 8 years imprisonment. Those who direct several such associations are punishable with death.
- .....
3. Those who found, attempt to found, direct or inspire associations contrary to the principles of the Republic or of democracy, or aimed at government of the State by a single individual or by a group of individuals, are punishable with 8 to 15 years imprisonment."

In substance the defendants were accused of aiming at disrupting national unity and territorial integrity, as well as at overthrowing the existing social order. The defendants refused to answer questions and to submit documents requested, claiming that the Court was without jurisdiction on the ground that if the prosecution established its case, the Party would be dissolved and that only the Constitutional Court had, according to the last paragraph of section 57 of the Constitution, authority to take such a measure. This provision runs as follows:

"Actions in law involving the dissolution of political parties shall be heard at the Constitutional Court, and the verdict to dissolve them shall be rendered only by the same Court."

To compel the defendant to reply to the prosecution's questions, the Court sentenced him to 6 months imprisonment in November 1975, although already in October the Constitutional Court had declared unconstitutional the law establishing the State Security Court. It had, however, granted a delay of one year to enable Parliament to enact a new law conforming to the Court's ruling. No such law has so far been adopted. Mr. Belli appeared again before the State Security Court in June 1976. After several hearings, upon request of the Procurator it admitted its lack of authority to decide the case until such time as the Constitutional Court had given its ruling concerning the legality of TEP's programme.

In October 1976, the case was transferred to the assizes which took no decision and, after the declaration of a state of siege in January 1979 it transferred the file to the military "Court of the State of Siege" which on the ground of its lack of jurisdiction, submitted the problem to the "Tribunal of Conflicts", a Tribunal competent, in case of conflicts of jurisdiction to determine the court that in law has authority to give a ruling on the case concerned.

That court however refrained from giving a ruling pending the decision of the Constitutional Court on the legality of the TEP's programme.

### *Proceedings Before the Constitutional Court at Ankara*

This Court was seized with the matter by the Prosecution on 5 March 1979. The TEP was charged with violating by its programme article 89 the "Law concerning political parties" of 15 July 1965. In conformity with article 57 of the Constitution quoted above, not the leaders but the Party's programme was to be judged as to its compatibility with the Constitution and

the above-named enactment. The law on political parties, section 89 reads as follows: (translation)

"Political parties are not authorised to allege the existence on the territory of the Turkish Republic of minorities originating from differences of national or religious culture or of language.

Political parties may not aim at undermining national integrity by maintaining, developing or propagating languages or cultures other than the Turkish culture and language and thus creating minorities on the territory of the Turkish Republic."

According to Mr. Belli's summary of the indictment, (it has not been possible to obtain the original with an authorised translation) the prosecution declared that article 89 lays down the constitutional principles defending the unity of the nation and the territorial integrity of the country and that the Party had violated this principles by advocating in section H of its programme entitled Culture and National Revolution... "the right to learn, to teach, to explain, to propagate freely science and the arts..., rights which are to be realised according to article 12 of the Constitution by teaching, under the supervision and control of the Minister of Education, in their mother tongue those citizens whose language of origin is not Turkish." Article 12 of the Constitution contains the following provision:

### "III. Equality:

All individuals are equal before the law irrespective of language, race, sex, political opinion, philosophical views, religion or religious sect. No privilege shall be granted to any individual, family, group or class."

The prosecution contended that the Party aimed at "creating" a minority by protecting a "vernacular and culture other than the Turkish language and culture", and by so doing violated not only section 89 of the law on political parties, but also the first para. of section 57 of the Constitution which says:

"The statutes, programmes and activities of political parties shall conform to the principles of a democratic and secular republic, based on human rights and liberties, and to the fundamental principle of the State's territorial and national integrity. Parties failing to conform to these provisions shall be permanently dissolved."

The prosecution interpreted section 89 of the Law on political parties to have the same meaning as the foregoing constitutional provision i.e. that the Turkish State and nation are a monolithic and indivisible entity, that its official language is Turkish and that no other language may be used. It follows, that political parties are forbidden to declare in their programme that there exists in Turkey any other language than Turkish, or to advocate that Turkish citizens should be educated in any other language than Turkish. Consequently the Prosecution, relying on section H of the TEP's programme summarised above, requested the Constitutional Court to order the Party to be dissolved for having infringed section 89 of the Law on political parties and article 57 of the Constitution.

### *A Precedent:*

It may be useful to recall here a precedent mentioned in ICJ Review No. 10 of June 1973 (pp. 39 and 43):

"There are believed to be at least 2 million Kurds in South-East Turkey... Successive Turkish governments have refused to recognise the existence of this minority... The teaching of Kurdish in schools is forbidden... The frequent references in the Turkish Constitution, and in particular the 1971 amendments to the Constitution, to "safeguarding the integrity (or indivisibility) of the State with its territory and its people" is directed (inter alia) against movements asserting the minority rights of the Kurds, even if they are not separatist in character. It was partly on this ground that the Labour Party of Turkey was dissolved and its leaders imprisoned in 1971."

"In the proceedings against the Labour Party... The principal attack was based on the fact that... the Party had advocated cultural rights for the Kurdish minority, including the right "to be educated and to have publications in their own language."

Although the TEP, in section H of its programme summarized above does not mention the Kurds and speaks only in general terms of minorities, it may be supposed that its leaders had mainly the Kurds in mind when advocating cultural rights for ethnic minorities.

### *The Defence:*

In its defence, the Party requested the Court to declare section 89 of the Law on political parties unconstitutional. A memorandum by Professor Bülent Tanor of the Faculty of Law, Istanbul, was submitted in support of this contention. This memorandum may be summarised as follows:

1. To imply the existence or non-existence of ethnic minorities is a political or

scientific opinion, the enunciation of which is protected by sections 20 and 21 of the Constitution regarding freedom of expression and of scientific research. Political parties have the same rights to the benefit of these provisions as physical persons. The Turkish state acknowledges by statistical data the existence of a Kurdish minority.

2. It is impossible to "create" an ethnic minority simply by asserting its existence. On the other hand, it seems inconceivable to content that the mere fact of alleging the existence of such minorities threatens the integrity of the country but that is exactly what the law attempts to do. By other provisions that law has prescribed measures to protect national integrity. This proves again that the law does not incriminate *activities but ideas*, thus violating sections 20 and 21 of the Constitution.

### *Ruling on the Constitutionality of Section 89 of the Law on Political Parties*

On 22 January 1980 the Court gave its decision rejecting the request that it should declare section 89 of the Political Parties Code incompatible with the Constitution and saying that it would give its reasons later.

Upon request of counsel for the defense, the hearing was then adjourned until February 26. Mr. Mihri Belli having been taken into custody for carrying a pistol in his car. Mr. Mihri Belli had previously been victim of an attempt on his life in the course of which he had been seriously wounded. He had in vain applied for authority to carry a weapon for self-defence.<sup>1</sup>

1. On 23 May 1980 at 3.30 a.m. the door of the apartment of the treasurer of the TEP, Mr. Vecdi Özgüner, was forced open. His wife was shot dead and Mr. Necdi seriously injured by bullets in the arm and chin. The culprit has not been traced. The flat is 200 yards from a police station.

### *Hearing on 26th February 1980*

The author attended this hearing as an observer for the International Commission of Jurists. He was courteously received by the President of the Court, Mr. Sevkett Müftügil. Every facility was given to enable him to follow the proceedings.

The Prosecution invited the Court to take cognizance of the expert opinion obtained by the Prosecutor of the military Court in Istanbul affirming that the leaders of TEP had violated sections 141 and 142 of the Penal Code, and to inquire whether defendants had replied to that expert opinion.

Counsel for the defence stated that having pleaded lack of jurisdiction of that Court, they could not reply to experts called by a Court without authority to give a ruling in their case. Furthermore, the indictment had never been read in the whole course of the proceedings before the Courts of State Security and State of Siege. They could not reply to an indictment, of whose particulars they were ignorant.

The Prosecution's request was rejected and the Court adjourned until March 3, to enable the defence to prepare further statements.

### *Hearing on 3 March 1980*

The case for the defence as presented by Counsel during this hearing may be summarised as follows:

1. They had already at previous hearings made it clear that the Prosecution's interpretation of section 89 was contrary to the democratic essence of the Constitution.
2. Only a free society which had eliminated feudal oppression and retrograde social relations would be in a position to

establish genuine national unity.

3. Section 89 should not be interpreted as the Prosecution did as denying the existence of national and religious minorities, but rather as prohibiting the establishment of political organisations based on linguistic and religious differences and aiming at the destruction of national unity and territorial integrity of Turkey. To prohibit all reference to the existence of such minorities would be an infringement of sections 12, 20 and 21 of the Constitution.
4. While admitting the existence of non-muslim minorities, e.g. those protected by the Lausanne Treaty, the Prosecution refuses to recognize the right to exist of the Kurds.
5. It is denied that TEP propagates or advocates class war in the spirit of "proletarian internationalism".

The Court adjourned again until 18th March 1980 to allow time to the Prosecution to prepare its final address.

### *Hearing of 18th March 1980*

A summary of the Prosecution's case as presented at that hearing is follows:

1. The Prosecution read extracts from the TEP programme affirming that the working classes' class-consciousness was ever increasing and its exploitation growing. They and the poor peasants ought to endeavour to become the ruling class in order to prepare a socialist revolution. They belong to the people of the whole world who carry on this revolutionary struggle. The movement must act in the spirit of revolutionary internationalism, inseparable from true patriotism; it shall eliminate retrograde policies such as forced assimilation and fight for the

right to education in their vernacular and culture of all citizens of school age whose mother tongue is not Turkish.

2. Although requested by the Ministry of the Interior to amend its programme to bring it into conformity with the law, the party refused to do so.
3. The Party endeavoured to create a minority by protecting a vernacular and culture different from the Turkish language and culture.
4. Section 89 of the Law on political parties was nothing other than a detailed definition of Constitutional principles in defence of national unity and territorial integrity.
5. Consequently dissolution of the Party is requested for violation of sections 57/1 of the Constitution and 89 of the Law on political parties, political parties having no right to allege in their programme that there exists any other language than Turkish in Turkey.
6. In the prosecution's opinion section 12 of the Constitution is meant to apply only to those ethnic and religious minorities protected by the Treaty of Lausanne.

The Court then adjourned again to 10 April 1980.

### *Hearing on 10 April 1980*

The first counsel for defence developed the following arguments:

1. He again emphasized, that whatever the wording of section 89, it cannot be interpreted in such a way as to contradict sections 20 and 21 of the Constitution, that is to say contrary to freedom of thought and freedom to teach and acquire scientific knowledge. Section 89 defends the indivisibility of the country;

it forbids acts contrary to this principle. The Prosecution has failed to establish that TEP's program and aims are violating them.

2. Section 2 of the Constitution says in essence that Turkey is a democratic State, based on the respect of human rights. Section 89 of the Law on political parties must be interpreted in the light of the Constitution and in a democracy ideas may not be incriminated.

The second counsel for defence underlined that the TEP's program and statute kept strictly within the limits of the Constitution and of the Law on political parties. He said in substance:

1. The Party aims at creating a society of citizens equal before the law, a society where all classes contribute to determine the fate of the nation.
2. The program anticipates the creation of a "national democracy". It defends unity of the people on a national basis.
3. The Party's statute speaks in terms of one Turkey, one people, one nation.
4. Contrary to the prosecution's allegations, the Party's programme neither "creates" a minority, nor aims at the disruption of national unity by this minority through developing and propagating a non-Turkish culture.
5. It therefore cannot be successfully alleged that by its statutes or programme the Party violated the rules and principles of section 89 of the Law on political parties.

The Court then adjourned to May 8th to give its final ruling. On that date the Constitutional Court gave its decision as follows:

"In view of the fact that certain words in the TEP programme and especially the words in the second paragraph of section

H entitled 'For a national revolutionary culture' saying (Education in the vernacular tongue and culture under the administration of the Ministry of Public Education for Turkish citizens of school age whose mother tongue is not Turkish (article 12 of the Constitution)' have violated article 57/1 of the Constitution determining the imperative principles by which political parties are to abide, as well as article 89 of the Political Parties' Code of 13 July 1965, No. 648, the Court has unanimously reached the verdict that TEP be permanently banned in accordance with article 111/1 of the Political Parties' Code and that copies of the final verdict be sent to the Prime Minister's Office, the Ministries of the Interior and Finance as well as to the General Prosecutor's Office for the fulfilment of the necessary formalities."

(The grounds of the decision will be published at a later date.)

### *Legal Consequences of This Ruling for Mr. Mihri Belli as Chairman of the TEP*

It appears that the above-mentioned Tribunal of Conflicts will now determine whether the Court of Assizes or the Military Court has jurisdiction in the case against Mr. Mihri Belli for violating sections 141/1 and 3 of the Penal Code. The Prosecution will then present the indictment to whichever Court is designated. The indictment will be based on the Constitutional Court's ruling quoted above.

Should Mr. Mihri Belli be found guilty he risks a sentence of imprisonment for 5 to 15 years. The provisions speak of "heavy imprisonment" which may mean hard labour. Mr. Mihri Belli is now 65 years old.

## *Comments and Conclusions*

### *The Constitutional Court*

Under section 145 of the Constitution as amended in 1971 the Court consists of 15 judges. Eight are elected by their peers from among the members of the different highest Courts of the land, three by the National Assembly, two by the Senate and two by the President of the Republic. According to section 146, retirement age is at 65. Members may be compulsarily retired only if convicted of a crime disqualifying them from office or for reasons of health on a vote adopted by an absolute majority at a plenary session of the Court.

According to section 147 as amended, the Court reviews the constitutionality of enactments and of bylaws of the National Assembly and any questions whether the proper procedures for amendments to the Constitution have been respected. It has jurisdiction to try the President of the Republic, Ministers, its own members and members of the highest Courts of the land for any crimes committed in the exercise of their functions. According to section 148 all proceedings are in writing but the Court does permit oral argument. The ordinary courts will adjourn a case upon a plausible allegation of the unconstitutionality of a relevant enactment, or if they themselves are in doubt concerning the constitutionality of the law to be applied, until the Constitutional Court has given its ruling (section 151, as amended). The rulings of the Court are final and may be published only together with their ground (section 152).

These provisions seem to establish the independence of the Court from the Executive. Their members are selected by procedures ensuring such independence. Subject to the exceptions mentioned above, they cannot be removed from office. They have reached the summit of their careers.

It would therefore appear that they should not be amenable to pressure by the government or partisan interests, but it may be assumed that their background and the general political, economic and social situation of the country will not be without influence on their decisions. Thus they may have felt in the present case, that it was necessary to affirm the Constitutionality of the legal provisions involved, given the social and political unrest, the economic difficulties and the international environment of the country.

### *The Character of the Trial*

It may be said that before the Constitutional Court the TEP has received a fair trial in the sense that several hearings have been held; the Party was acquainted in due time with the indictment and its particulars; time was given to the defence to prepare its case and to reply to the Prosecution's charges. This concerns the forms, which the Court appears to have scrupulously respected. As to the substance, a closer analysis will show whether the legal enactments the Court had to apply did not make the outcome, unfavourable to the TEP, a foregone conclusion.

#### *(a) The Constitution*

The Turkish Constitution contains a number of provisions which are difficult to reconcile with each other, if not altogether irreconcilable, especially since the constitutional reform of 1971. Attention is drawn again to "The Rule of Law in Turkey and the European Convention on Human Rights", ICJ Review No. 10, June 1973, quoted above where the problem is critically analyzed.

Applicable here, because invoked by the Prosecution, are sections 3, 11, and mainly

section 57, while the defence referred to sections 2, 3, 12, 20, 21 and the last paragraph of section 57, the latter mainly in support of its contention of lack of jurisdiction of the various penal Courts in Istanbul where Mr. Mihri Belli personally and not the TEP was indicted in his capacity as the responsible Chairman of the Party.

Section 2 sets out the general principle that Turkey is a democratic republic, governed by the rule of law, based on human rights.

Section 3 states that the Turkish State is "an indivisible whole comprising its territory and its people. Its official language is Turkish." – This provision was used by the prosecution to accuse the TEP that, by advocating the teaching of citizens in their mother tongue other than Turkish, they were attempting to "create" a minority and by so doing, to destroy the indivisibility of the Turkish territory and nation.

To counter this accusation, the TEP referred to section 12 which in general terms guarantees the equality of all Turkish citizens before the law irrespective of language, race, sex, political opinion, philosophical views, religion or religious sect, but the Prosecution contended that these provisions were written into the Constitution only with reference to the ethnic and religious minorities protected by the Treaty of Lausanne.

The TEP furthermore referred to sections 20 and 21 of the Constitution granting to everyone freedom of thought and expression, freedom to acquire and impart science and arts, to "profess and propagate knowledge concerning them..." Section 21 also declares that "Education and teaching shall be free under the supervision and control of the State."

The Party contended that by mentioning ethnic and linguistic minorities, they had stated a scientifically ascertainable fact and that by advocating the right for such



minorities to be taught in their language, they had done nothing more than enunciate a philosophical opinion and had therefore remained well within the limits set by the Constitution.

To this the Prosecution replied, invoking section 11 as amended, that rights and freedoms may be restricted "... with a view to safeguarding the integrity of the State with its territory and its people..." and that the TEP's program, by affirming the existence of ethnic minorities and languages other than Turkish tended to destroy this "integrity".

To justify furthermore its request to the Court to order dissolution of the TEP, the Prosecution quoted the first paragraph of Section 57 which declares that "The statutes, programs and activities of political parties shall conform to the... fundamental principles of the State's territorial and national integrity. Parties failing to conform to these provisions shall be permanently dissolved."

It would appear clearly from this analysis of the relevant constitutional provisions that those relating to equality before the law of all citizens irrespective of language, sex, religion etc. and to freedom of thought and expression and of teaching and learning are wholly inconsistent with those relating to the integrity and indivisibility of the Turkish State, territory and people, as interpreted by the Prosecution and confirmed by the verdict of the Constitutional Court.

(b) *Section 89 of the Political Parties' Code and section 141,1 and 3 of the Penal Code*

Only the first of these legal provisions was in question before the Constitutional Court. The TEP advocated its unconstitutionality, the Prosecution asked for the Party's dissolution by application of this

text and the Court confirmed its conformity to the Constitution and ordered the dissolution of the TEP.

It is difficult to accept that a law forbidding political parties from alleging the existence of linguistic, religious or cultural minorities on Turkish territory is compatible with constitutional provisions granting freedom of thought and expression. One also fails to see how propagating languages and cultures other than the Turkish language and culture could "create" a minority inexistent prior to such propagation. One cannot but agree with the conclusion of Professor Bülent Tanör's expert opinion submitted in defence of the TEP's assertion of unconstitutionality of section 89 to the Constitutional Court, that this "provision is not only unconstitutional and anti-democratic but also illogical and absurd."

Sections 141 (1 & 3) of the penal code need be mentioned only briefly as their constitutionality was not tested before the Constitutional Court. As a consequence of the Court's ruling, the Chairman of the Party, Mr. Mihri Belli, now has to stand trial for the alleged infringement of these provisions. They punish with long terms of imprisonment whoever "administers societies" purporting to establish a social class and aiming at overthrowing the existing social and economic order and whoever "attempts to establish societies and administers their activities... with the purpose of governing the State by one person or by a group of persons..."

It can hardly be denied that the TEP's programme as summarized above advocates certain measures susceptible to be interpreted as aiming at establishing a new social and economic order. But, at the same time, the programme insists that these aims can and will only be achieved by democratic means and that everyone will be authorized to participate, by the free expression of his or her opinions, in the government of the

State. Nowhere is a One-Party State or a one man government advocated.

Be this as it may, such provisions seem hardly compatible with the fundamental principles of a free society and the rules laid down by the European Convention on Human Rights to which Turkey is a party.

(c) *The European Convention on Human Rights*

The application of the European Convention on Human Rights by Turkey has been examined in detail in the above mentioned article in the ICJ Review No. 10. It may suffice to quote here point (4) of the conclusions, which reads as follows:

"Apart from the emergency measures, the changes which have been made to the Constitution and to the permanent laws in the last two years conflict with the obligations contained in the Convention in numerous respects, and in particular in relation to freedom of expression, freedom of association and the right to a fair trial. Being alterations to the permanent legislation these cannot be justified as 'emergency measures' under article 15 of the Convention."

Let it be recalled that section 9 of the Convention guarantees freedom of thought and that freedom of expression is guaranteed by section 10, that according to section 14, the benefit of the rights and liberties enshrined in the Convention must be ensured without discrimination based on sex, race, colour, language, religion, political opinions, national or social origin, belonging to a national minority and so on.

The final conclusions to be drawn are that:

- the TEP had a fair trial before the Constitutional Ankara;
- the rights of the defence were respected;
- the constitutional provisions and legal enactments applicable and strictly interpreted by that Court are in several respects contrary to essential human rights, in particular to the right of freedom of thought and freedom of expression orally or in writing;
- these constitutional provisions and legal enactments seem incompatible with Turkey's obligations under the European Convention of Human Rights.

# **BASIC TEXTS**

## ***UN Code of Conduct for Law Enforcement Officials***

On 17 December 1979 the General Assembly of the United Nations adopted (without a vote) a Code of Conduct for Law Enforcement Officials. The Assembly decided to transmit it to governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

In its resolution approving the Code, the Assembly declared that among other important principles and prerequisites for the human performance of law enforcement functions were:

- that every law enforcement official is part of the criminal justice system, the

aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system;

- that every law enforcement agency, in fulfilment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency.

The following is the text of Code:

### ***Code of Conduct for Law Enforcement Officials***

#### *Article 1*

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

#### *Commentary:*<sup>1</sup>

- (a) The term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

1) The commentaries provide information to facilitate the use of the Code within the framework of national legislation or practice. In addition, national or regional commentaries could identify specific features of the legal systems and practices of different States or regional intergovernmental organizations which would promote the application of the Code.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

#### Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

##### *Commentary:*

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of *Apartheid*, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

#### Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

##### *Commentary:*

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

#### Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty, or the needs of justice, strictly require otherwise.

*Commentary:*

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

*Article 5*

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

*Commentary:*

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

Such an act is... "an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights"<sup>1</sup> and other international human rights instruments.

(b) The Declaration defines torture as follows:

"... torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."<sup>2</sup>

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly, but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

*Article 6*

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, take immediate action to secure medical attention whenever required.

*Commentary:*

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgment of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

1) Article 2 of the Declaration, General Assembly resolution 3452 (XXX).

2) Standard Minimum Rules for the Treatment of Offenders: First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I.A.

#### Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

##### *Commentary:*

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their own agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connexion with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

#### Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of this Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

##### *Commentary:*

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The terms "appropriate authorities or organs vested with reviewing or remedial power" refer to any authority or organ existing under national law, whether internal to the law enforcement agency, or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in commentary (c). Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as of the law enforcement profession.

## MEMBERS OF THE COMMISSION

KEBA M'BAYE (President)	President of the Supreme Court of Senegal; former President U.N. Commission on Human Rights
ELI WHITNEY DEBEVOISE (Vice President)	Attorney at law, New York
T.S. FERNANDO (Vice President)	Former Attorney General, President of the Court of Appeal and High Commissioner of Sri Lanka
ANDRES AGUILAR MAWDSLEY	Professor of Law, Venezuela; former President Inter-American Commission of Human Rights
GODFREY L. BINAISA	Former President of Uganda
ALPHONSE BONI	President of Supreme Court of Ivory Coast
BOUTROS BOUTROS GHALI	Minister of State of Foreign Affairs, Egypt
ALLAH BAKHSH K. BROHI	Former Law Minister, Pakistan
WILLIAM J. BUTLER	Attorney at law, New York
JOEL CARLSON	Attorney at law, New York; formerly attorney in South Africa
HAIM H. COHN	Supreme Court Judge; former Minister of Justice, Israel
ROBERTO CONCEPCION	Former Chief Justice, Philippines
CHANDRA KISAN DAPHTARY	Senior Advocate; former Attorney General of India
TASLIM OLAWALE ELIAS	Judge of International Court of Justice; former Chief Justice of Nigeria
ALFREDO ETCHEBERRY	Advocate; Professor of Law, University of Chile
EDGAR FAURE	Former Prime Minister of France
FERNANDO FOURNIER	Attorney at law, Costa Rica; former President of the Inter-American Bar Association; Professor of Law
HELENO CLAUDIO FRAGOSO	Advocate; Professor of Penal Law, Rio de Janeiro
LORD GARDINER	Former Lord Chancellor of England
P. TELFORD GEORGES	Professor of Law, University of the West Indies; former Chief Justice of Tanzania
JOHN P. HUMPHREY	Professor of Law, Montreal; former Director, U.N. Human Rights Division
HANS HEINRICH JESCHECK	Professor of Law, University of Freiburg, Fed. Rep. Germany
LOUIS JOXE	Ambassador of France; former Minister of State
P.J.G. KAPTEYN	Councillor of State, Netherlands; former Professor of International Law
SEAN MACBRIDE	Former Irish Minister of External Affairs and U.N. Commissioner for Namibia
RUDOLF MACHACEK	Member of Constitutional Court, Austria
FRANCOIS-XAVIER MBOUYOM	Procureur Général, United Republic of Cameroun
MRS NGO BA THANH	Member of National Assembly, Vietnam
TORKEL OPSAHL	Professor of Law, Oslo; Member of European Commission
GUSTAF B.E. PETREN	Judge and Deputy Ombudsman of Sweden
SIR GUY POWLES	Former Ombudsman, New Zealand
SHRIDATH S. RAMPHAL	Secretary General of the Commonwealth Secretariat; former Attorney General, Guyana
DON JOAQUIN RUIZ-GIMENEZ	Professor of Law, Madrid; President, Spanish Justice and Peace Commission
MICHAEL A. TRIANTAFYLIDIS	President Supreme Court of Cyprus; Member of European Commission
J. THIAM HIEN YAP	Attorney at Law, Indonesia
MASATOSHI YOKOTA	Former Chief Justice of the Supreme Court of Japan

## HONORARY MEMBERS

Sir ADETOKUNBO A. ADEMOLA, Nigeria	ISAAC FORSTER, Senegal
ARTURO A. ALAFRIZ, Philippines	W.J. GANSHOF VAN DER MEERSCH, Belgium
GUISEPPE BETTIOL, Italy	JEAN FLAVIEN LALIVE, Switzerland
DUDLEY B. BONSAI, United States	NORMAN S. MARSH, United Kingdom
VIVIAN BOSE, India	JOSE T. NABUCO, Brazil
A.J.M. VAN DAL, Netherlands	LUIS NEGRON FERNANDEZ, Puerto Rico
PER FEDERSPIEL, Denmark	Lord SHAWCROSS, United Kingdom
	EDWARD ST. JOHN, Australia

## SECRETARY-GENERAL

NIALL MACDERMOT

## RECENT ICJ PUBLICATIONS

### The Trial of Macias in Equatorial Guinea

*Report of an observer mission by Dr Alejandro Artucio, legal officer of the International Commission of Jurists, published by the International Commission of Jurists and the International University Exchange Fund, Geneva, December 1979, 70 pp. Available in english or spanish. Swiss Francs 4 or US\$ 2.50, plus postage.*

The report includes a description of the nature of the repression under Macías and the economic and social conditions of the country resulting from it. Criticisms are made of certain legal aspects of the trial, but the observer found most of the charges fully proved.

### Persecution of Defence Lawyers in South Korea

*Report of a mission by Adrian W. DeWind, former President of the New York City Bar Association and John Woodhouse, Secretary, Centre for the Independence of Judges and Lawyers, published by the International Commission of Jurists, Geneva, November 1979, 68 pp. Swiss Francs 4 or US\$ 2.50, plus postage.*

This report describes the prosecution and punishment or harassment of nine lawyers arising out of their defence of political prisoners. These cases indicate the harassment accorded to "the small body of civil rights attorneys who have attempted to carry out their obligation to be vigilant in the protestation of human rights." As a background to these cases, the authors describe the general nature of the political repression and the undermining of the independence of the judiciary in South Korea.

### Human Rights in Guatemala

*A report of a mission by Donald T. Fox, New York attorney, published by the International Commission of Jurists, Geneva, September 1979, 66 pp. Available in english or spanish. Swiss Francs 4 or US\$ 2.50, plus postage.*

Mr Fox's report outlines the historical, social and economic factors which have resulted in "a large area of institutionalised exploitation and injustice"; gives an account of the prevailing violence by right and left wing forces, the greater part being by military and clandestine para-military forces acting in the "narrowly perceived economic interests" of dominant groups; and commends the recent proposals of the National Council of Economic Planning for a development strategy to achieve a just and stable social peace.

### ICJ Newsletter

*Quarterly report on ICJ activities,  
published January, April, July and October.*

*Annual subscription: 20 Swiss Francs (surface mail), 25 Swiss Francs (airmail)*

This informative quarterly publication describes the activities of the ICJ, its seminars, initiatives in the United Nations, observer missions, publications, press releases, interventions and reports on conferences attended by members of the ICJ staff. The Appendices include working papers and other documents produced by the ICJ secretariat.

*Publications available from: ICJ, P.O. Box 120, CH-1224 Geneva  
or from: AAICJ, 777 UN Plaza, New York, N.Y. 10017*