

For the Rule of Law**THE REVIEW****INTERNATIONAL COMMISSION OF JURISTS****CONTENTS****HUMAN RIGHTS IN THE WORLD**

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THE REVIEW IS FOR LAWYERS who support the work of the International Commission of Jurists and are prepared to make their own contribution to society within their areas of influence. Its essential role is to provide information and data and to express 'the corporate voice of every branch of the legal profession in its unceasing search for a just society and a peaceful world'.

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Editorial

The Law of Human Rights in the University

1970 has been proclaimed as 'International Year for Education' by the United Nations; it is a unique occasion to make a special effort at all levels towards the realisation of Article 26 of the Universal Declaration and thus to the promotion of human rights and fundamental freedoms for all.

In a world in which over-rapid scientific and material progress has outpaced the development of a sense of moral and ethical responsibility, it is essential that education should seek to rationalise the function of each discipline towards the achievement of higher moral values. For the International Commission of Jurists, this is particularly important in the case of the training and education of lawyers. In many areas of the world, lawyers are relied upon to advise governments and to set a standard for the administration of justice. The example they have learnt to set is thus of lasting and real significance.

It is now generally recognised among lawyers, and even among governments, that there is a *Law of Human Rights* which forms an integral part of the national and international legal system. This in itself is an important step forward, not only to secure the better protection of the individual, but also for the development of a sense of social and moral responsibility. Much of what is termed 'student unrest' today stems from the incredulity and lack of confidence which youth experiences in the ideals proclaimed by political leaders. The credibility gap between the principles proclaimed by the United Nations and governments and their practical implementation inevitably breeds cynicism among young people. And much of this cynicism is well-founded. There is nevertheless a worthwhile struggle taking place in most areas of the world to give effect to the principles of the Universal Declaration of Human Rights. Students and youth generally are largely unaware of this struggle because they are not given an opportunity to participate actively in it. One of the tasks of universities and other schools of learning should thus be to harness the idealism, sincerity and enthusiasm of the rising generation.

The first step in this direction should be the instruction certainly of all law students and of those studying the social sciences, in the Law of Human Rights. Other disciplines would also benefit from

such instruction. Such teaching should face squarely the disillusionment and the credibility gap between the principles proclaimed and their application, without seeking to excuse the lack of progress made in the field of human rights. It should seek to channel student energy and enthusiasm, to involve them in a higher endeavour—that of giving reality to the principles of the Universal Declaration.

Apart from these aspects, it has now become essential for lawyers to know thoroughly the different branches of the Law of Human Rights at national, regional and universal levels. These laws now form an integral and substantial part of most legal systems, yet very few lawyers are really conversant with them. To take but one simple example, how many lawyers are familiar with the various international instruments that have been adopted in recent years for the protection of human rights?

It is for these reasons that the International Commission of Jurists was instrumental in proposing, and having adopted, at the Conference of University Rectors, held in Vienna in August 1969, a proposal for the setting up of Chairs on the Law of Human Rights in all universities. The recommendation adopted by the Conference of University Rectors on 'The Role of the Universities in the Quest for Peace' recommended that there should be set up in every university a Chair for the teaching of the Law of Human Rights at national, regional and universal levels and recommended that topics should include the following:

- (a) The history of human rights including the development of humanitarian international law and rules;
- (b) The protection of the individual under the Law of Human Rights at national and international levels;
- (c) The protection of minorities under national and international law;
- (d) The elimination of all forms of racial and religious discrimination;
- (e) The status of the Universal Declaration of Human Rights as forming part of customary international law;
- (f) The status of the individual under the international Law of Human Rights;
- (g) The protection of human rights in armed conflicts;
- (h) The national and international institutions for the protection of human rights.

Every National Section of the International Commission of Jurists and its adherents should, in the year 1970, concentrate their efforts to ensure the setting up of a Chair on the Law of Human Rights in the universities of their respective countries. This would be one of the most fitting ways by which lawyers throughout the world could make a worthy contribution to International Education Year.

Human Rights in the World

East Africa

Elsewhere in this issue, the Commission expresses concern about the happenings in Zambia last July. Since, and shortly before going to press, a series of disturbing events have been reported from neighbouring areas of East Africa.

In Kenya, the only opposition party has been proscribed and its leaders have been detained as the country prepares for a somewhat overdue general election.

In Tanzania, a series of events have taken place which can only cause grave anxiety to all those who have admired President Nyerere and the principles of government for which he has stood. Concern is centred on Tanganyika's partner in the United Republic, Zanzibar.

For some considerable time it has been obvious that there is arbitrary rule in Zanzibar exercised by a small clique within the island itself.¹ Recently it was announced that a trial of fourteen persons had taken place and that four had been executed. Mystery still reigns as to the names of those executed, but it is reported that they may include a former Vice-President of Zanzibar, Kassim Hanga, and a former Tanzanian Ambassador to the United States, Othman Shariff. Efforts by the International Commission of Jurists to ascertain the names of those executed and details of the trial have so far failed. It is however clear that the 'court' which 'tried' Shariff, Hanga and the others was not a court of law in the accepted sense. It was no more than an extension of the will of the Zanzibar Revolutionary Council.

Still further concern has arisen by reason of reports that there has been a demand for the public execution of the nine men who were given prison sentences and the one who was acquitted. The reports are that Sheik Abeid Karume, the ruler of Zanzibar, is considering a request to have the ten men retried, sentenced to death and executed publicly. It is also reported that there are demands to burn them publicly.

If these threats are to be taken seriously, they disclose an extremely grave situation which must arouse the indignation of world public opinion. If on the other hand they are the irresponsible utterings of some Zanzibaris, members of the Tanzanian Government should

¹ See *Bulletin of the ICJ*, No. 30 (June 1967), p. 38.

appreciate the irreparable damage which such statements cause to the Republic and to Africa as a whole.

On the mainland of Tanganyika, six persons have been arrested for plotting to overthrow the Government of the United Republic by force. It is only right that the alleged conspirators should be tried before the ordinary courts of the Republic. The President's statement that the six persons detained are to be brought to trial is welcome. It thus appears that the Rule of Law is at least to operate in Tanganyika. But one of the most disturbing features of the events in Zanzibar was the fact that three of the accused, probably among those executed, were flown from the mainland to Zanzibar on the orders of President Nyerere. It must have been clear to the President for some time that justice, which he himself has hitherto upheld,¹ has not been practised in Zanzibar. It is therefore extraordinary and uncharacteristic that he was prepared to put Shariff, Hanga and Ali Tambwe into the hands of the Zanzibar authorities.

It is proper that President Nyerere and others in the public life of his nation should be reminded of the impressive preamble to the Interim Constitution of Tanzania which guarantees, inter alia, the right of all men to protection of life; and which recognises that this right—together with all the other fundamental rights—is best protected in a society where the courts of law are free and impartial. It is legitimate to enquire whether the preamble is now verbiage only and indeed whether the Zanzibar Revolutionary Council have ever paid more than lip service to the Interim Constitution.

That such grim darkness should besmirch the good name of Tanzania is tragic. That cruelty and arbitrariness should be tolerated in any part of free Africa is harmful to the whole cause of Africa and will inevitably be used by the racist and colonial regimes of Southern Africa. African leaders should ponder on the consequences of their actions in this wider context.

¹ See, for example, *Bulletin of the ICJ*, No. 20 (September 1964), p. 49.

Ethiopia, Sudan and Chad

Development or Deterioration?

When the European powers colonised Africa in the last century they divided the continent between them on the haphazard basis of their discoveries, conflicts and negotiations. The local populations were not of course consulted as frontiers severed them from their own ethnic groups, traditions and religions and tied them up with others. With the Berlin Conference of 1885 this process of partitioning was almost complete.

The situation today is no different. The new African States have acquired independence within the colonial frontiers and have thus inherited their colonisers' artificial divisions and arbitrary ethnic unions. However, border issues have, as a matter of policy, not been raised by African countries; indeed, whenever a country has put forward claims in this respect, it has been condemned by the Organization of African Unity.

But problems do still arise; frequently one ethnic group has, on independence, received or assumed the task of administering the whole country—to the detriment of the other ethnic groups and often with the protection of the former colonial power. Reference could be made in this connection to the disasters following Belgium's decolonisation of the Congo, Ruanda and Burundi; and now the conflict between Nigerians and Biafrans is in everybody's minds.¹

However, arbitrary as they are, the present frontiers in Africa are nearly one hundred years old. Traditions have been created; to challenge them now might bring on a serious crisis affecting the whole continent and jeopardise a united effort towards real independence, economic development and a true respect for the rights of all human beings.

Thus a good neighbour policy between adjoining States, combined with a determined policy of national unity within each country, is essential if all risk of racial conflict is to be dispelled. Many countries are now committed to such policies; yet, in addition to the Nigeria/Biafra conflict, three neighbouring countries in north-east Africa are torn by open racial conflicts: Ethiopia, Sudan and Chad.

¹ See *The Review*, No. 2, pp. 10-14.

It is proposed to examine briefly the causes of the deterioration in relations between the races in each of these three countries. This may lead States to a more tolerant and understanding attitude and thus ensure the support of all citizens in the service of a united State whose sole concern is to safeguard its independence and further its economic and social development.

ETHIOPIA

Except for the period under the Italian Protectorate from 1889 to 1896 and the Italian occupation from 1936 to 1941, Ethiopia has been independent from the most ancient times. Yet much of her present serious problems¹ stem from a colonial phenomenon: Eritrea.

From the end of the last century the Italians had made Eritrea the main base for their operations against Ethiopia. At the end of the second World War when the status of this former Italian colony was discussed, total independence was proposed; however the UN General Assembly decided, by a resolution of 2nd December 1950, that it should become an autonomous unit within the Empire of Ethiopia.

In this Resolution, the Assembly expressly took into consideration 'the rights and claims of Ethiopia, based on geographical, historical, ethnic and economic reasons' and 'Ethiopia's legitimate need for adequate access to the sea' and indicated the broad lines of the federal system to be drawn up.

The Federation was proclaimed on 15th December 1952; it granted the Eritreans considerable autonomy, with a local government and parliament sitting in Asmara, the capital of the Federate State. The Federation rapidly degenerated into direct administration from Addis Ababa; within three years Eritrea had lost her flag, the two budgets were amalgamated, freedom of expression disappeared and the local courts were subordinated to the Ethiopian courts. As a result the Prime Minister and the Secretary-General of the Unionist Party resigned.

The status of Eritrea was officially changed in 1962 by a decision from Addis Ababa turning her into an Ethiopian province. Immediately guerrilla activities broke out in the new province. They are led by the Eritrean Liberation Front, which comprises most of the active members of the former Unionist Party prior to independence. The method adopted by this organisation to attract world attention is action against the Ethiopian airlines: in March 1969 a bomb was

¹ Other problems which may be mentioned in passing are the border disputes with Somalia and the antagonism inside the country between the (ruling) Amharas of Abyssinian stock, and the Gallas, a Hamitic group, who are kept out of power.

thrown at an aircraft in Frankfurt airport, and in June 1969, at an aeroplane in Karachi airport; in September 1969 an aeroplane on a routine flight from Addis Ababa to Djibouti was diverted¹ to Aden.

Several thousand Eritreans, it is estimated, are engaged in guerilla activities. The federal authorities counter by sending troupes and aeroplanes to bombard Eritrean villages. According to the Office of the High Commissioner for Refugees, thirty-one thousand refugees have crossed over to the Sudan up to date. To state that this is just a religious conflict between the Moslem Eritreans and the Christian Ethiopians would be a simplification. It is primarily the expression of the Eritreans' desire to recover their autonomy; it is the legitimate aspiration of a people to govern themselves freely, in accordance with a Resolution of the United Nations.

THE SUDAN

No historian could have predicted that two regions as clearly separated geographically (by a huge river and vast marshes) and racially (Arabs and Moslems in the North, Animist or Christian negroes in the South) would one day be associated in a single State. It was Great Britain who, having occupied Egypt in the 19th Century, wished to extend her domination over the Sudan. At first thwarted in her attempts to colonise the country by Mohammed Ahman, who proclaimed himself the divine leader of the Mohammedans, the Mahdi, Britain succeeded in conquering the Sudan, thanks to Lord Kitchener's victory over the Mahdists in 1898 at Omdurman and over the French troops led by Marchand the same year at Fachoda. These two victories of the Anglo-Egyptian troops brought the present-day territory of the Sudan Republic under the domination of Great Britain and Egypt, who administered it as a condominium.

The condominium lasted until 1955, during which time the occupying countries applied a systematic policy of segregation of the two communities which now formed a single state—with the natural result that the geographical, economic, religious, racial and cultural disparities only increased.

The Sudan's independence was proclaimed on 1st January 1966. Whereas political life in the North became quite intricate, a secessionist movement formed in the three southern provinces (Upper Nile, Equatoria and Bahr El Ghazal), which has since 1962 been led by the Sudan African National Union (SANU). After the 1958 take-over the Khartoum Government sought to impose Arab domination in the South and resorted to force. The answer of many in the

¹ On this point, see: D. Marchand, 'Abductions effected outside National Territory', *Journal of the ICJ*, Vol. VII, No. 2, pp. 243-268; also 'Kidnapping Incidents', *Bulletin of the ICJ*, No. 32, pp. 24-33.

South was armed rebellion within the 'Anyanya';¹ at the same time part of the population fled to neighbouring countries to avoid slaughter by troops from the North. (The refugees are mainly in Uganda, the Democratic Republic of the Congo and the Central African Republic).

On 25th May 1969, 'left wing' officers seized power in Khartoum and two weeks later made an important announcement: that they recognised the right of the three southern provinces to autonomy. The head of the new Government stated publicly that the new regime was determined 'to grant self-government to the southern provinces in order to reestablish the equality of the two parts of the country and to institute in this way a genuine national and socialist unity'. He proposed that talks should begin immediately to settle the exact form of autonomy and to draw up a programme for economic, social and cultural development. He proclaimed a General Amnesty and urged the refugees to return without fear to their country and homes.

This offer has been diversely received in the southern provinces. Some of the movements wish to continue fighting until total independence is achieved; others would like to negotiate a status of autonomy now.

This is then the position up to today. Autonomy should certainly be seriously considered, at least as a temporary solution. It would seem to be the only alternative that the North (which also has its own extremist and aggrieved elements to deal with) and the other African States in the OAU are prepared to accept. Acceptance of autonomy by both parties would have immense advantages: an end would be brought to the brutal war that has raged in the region for the last twelve years, and the whole country would be able to promote its harmonious economic and social development.

CHAD

One of France's aims during the 19th century was to extend her domination from the Mediterranean to the Congo. In 1897, the Gentil Mission reached Lake Chad and in 1898 the region fell to France under an Anglo-French convention. France used Lake Chad as a connecting base for her various settlements; it was not until 1913 that Chad in her present form was established. This immense territory comprises vastly different populations. The South is inhabited by a negro tribe of agricultural settlers, the Saras, who are mostly Animists or Christians. The Toubous cover most of the

¹ Anya Nya is the very deadly poison carried by the mamba, a large snake inhabiting the African river banks. Its name was adopted by the freedom fighters of the 'Azania Liberation Front'—Azania, their new name for the three southern provinces, was formerly given by the ancient Greek navigators to the African continent south of the Red Sea.

North; they are a fair-skinned, nomadic people, who raise livestock and are, in the main, Moslems.

The Toubous live in the desert regions of Borkou-Ennedi-Tibesti (BET), a region that has always been difficult to control, which explains why Chad maintained the French military administration of the colonial period until 1965, five years after independence. After 1965, occasional disturbances flared up in this region and in Fort Lamy, the capital. Regarded by the Government as the 'work of bandits', the incidents have increased sharply as a result of the departure of the French troops.

Although for centuries there has been a climate of insecurity in the BET, the real dissatisfaction of an important part of the population should not be overlooked. They resent more and more the quite artificial frontiers, hardly more than half a century old, with which the former colonial power left them and which placed them under the almost exclusive rule of the Southern authorities. Indeed, nearly all the leading personalities in the North have been removed from power, imprisoned, or even physically eliminated, because of their implication in a number of conspiracies of varying authenticity. From this opposition of an ethnic and religious nature was born the National Liberation Front or FROLINA. It is hard to assess the real importance of FROLINA; but its activities cover a large part of Chad and its revolutionary aims are broader than the defence of the North, from which it stemmed.

In the face of these dangers and the rising unrest President Tombalbaye, on 28th August 1968, invoked the defence agreements between France and Chad and requested French troops to assist the Chad troops and the French units permanently stationed in the country. The French troops are still on duty there.

It is difficult to foresee how events will develop. Clearly the Government's refusal to recognise the Toubous' identity and rights to the extent of eliminating them from power has led to a situation which has now seriously deteriorated and which is a threat, if not yet to the country's territorial unity, at least to the present regime.

Indonesia: a Country Studded with Prison Camps

In an article entitled 'Continued Absence of Democracy in Indonesia' which appeared in *ICJ Bulletin* No. 27 (September 1966), the International Commission of Jurist dealt with the abortive Coup d'Etat of 30th September 1965 and its horrible aftermath of violence and murder. The figures for those killed within the first year following the abortive Coup were variously estimated at between 87,000 and 600,000 persons. Though most of these killings were the result of a wave of revenge by Moslems and Nationalists against Communists and Indonesians of Chinese extraction, which broke out in different parts of the country, some sections of the army actively supported the killings while others stood aside allowing them to happen.¹

Although mass killings certainly ended in 1966, it is regrettable to note that even today the situation is far from normal. Though proof is difficult to obtain, sporadic killings on a smaller scale appear to have taken place since. In many regions of Indonesia anarchy reigns and violence takes the upper hand owing to the pathetic lack of central control. Extreme anti-Communist feeling is still very strong and certain local commanders continue to turn a blind eye to terrorist activity directed against persons or groups alleged to be Communist sympathisers.

While reference is made to this tragic feature of Indonesian life which has no parallel in any other country today, the main purpose of this article is to draw attention to another deplorable situation in Indonesia which arose from the mass arrests that followed the abortive Coup and which is creating a grave human problem of dimensions unknown elsewhere, namely the presence of about 350 military prison camps throughout the country, where tens of thousands of political prisoners continue to languish without even charges

¹ On 6th October 1969 President Suharto re-organised the command structure of the army, navy and air force by replacing the separate commanders with one deputy commander-in-chief of all three services under his own authority as Defence Minister and Commander-in-Chief. This is a positive step intended to prevent army excesses and to put an end to the freedom, which all three services had hitherto exercised, of moving units about the country.

having been preferred against them and with no prospect of trial or release in the reasonable future.

The Prison Camps

Political prisoners have been divided into three categories for the purpose of classification, Category A which represents the 'hard core' of Communists, Category B, said to be less dangerous men, and Category C, which is by far the most numerous, consisting of persons only suspected of being Communist sympathisers.

There are various estimates of the total number of political prisoners in Indonesia. Although an official statement from the Attorney General's Department gives the figures as 4,500 in Category A, 15,000 in Category B and 29,000 in Category C, making 48,500 in all, it is quite clear that the numbers are very much more.

Unofficial estimates range from 80,000 to 150,000. The information at our disposal indicates that there are at least 120,000 imprisoned in the 350 different prison camps, of whom perhaps 80,000 belong to Category C.

While conditions vary considerably from camp to camp, it is reasonably clear that supplies of food and medicaments fall everywhere far below the minimum necessary to ensure the survival and health of the prisoners. In some camps medical services are non-existent. Some of the military commanders in charge of camps are quite callous as to the ultimate fate of the prisoners; it was reported that in the early part of last year a number of prisoners were arbitrarily killed in some camps in East Java.

There now appears to be a growing realisation on the part of the Government as a whole that this most unsatisfactory state of affairs cannot be allowed to continue: that some method has to be found to deal with this vast problem and to liquidate the prison camps. There seems, however, to be little agreement as to how this can be achieved.

In the case of Category C prisoners, the Government has admitted that there is no evidence of coup involvement against them and has repeatedly declared its intention to release the detainees.¹ In view of these declarations, it was generally hoped that Indonesian National Day, 17th August 1969, would witness an announcement by the Government of a wide amnesty for prisoners in this Category. However, no such announcement was made; and the qualified statement of the Indonesian Attorney General, Major General Soegi Harto, early in September in regard to Category C prisoners that

¹ One of the paradoxical arguments used to justify their continued detention is that even if they were not communistically inclined when arrested, they have now become contaminated in the prison camps!

'we will free them when the people are prepared to accept them in community life' came as a disappointment.¹

Difficulties of the Government

Undoubtedly there are many practical difficulties which the Government has to contend with in attempting to find solutions to this problem. The Indonesian judicial machinery is hopelessly inadequate to try such a large number of men. Not only are judges and magistrates few in number, but half of them have had no legal training. The trials, even if commenced immediately on a large scale, would take years to complete.

If all prisoners in Category C were released immediately, as they should undoubtedly be — in view of the Government's admission that there is no evidence of coup involvement against them — their resettlement, rehabilitation and employment would cause a multitude of problems. The homes and lands of most of these people have already been seized and occupied by others, who would now refuse to restore them. Having been branded as Communist sympathisers, they are likely to be ostracised by the other residents of their towns or villages. In a country where unemployment figures are already high, finding employment for these persons would also be very difficult. Apart from all these factors, the Government fears that the mass release of pro-Communist elements would pose a serious danger to the safety and security of the State.

Obligation of the Government to remedy the Situation

While one recognises these difficulties, it must be emphasised that, despite certain undoubted advances which the Suharto Government has made in some fields, the prison camps with the human suffering they entail present a most unfavourable picture of the country to the outside world. It is therefore imperative that the Government find suitable solutions to this problem and find them soon.

The Two Aspects of the Problem

The problem has two aspects:

1. The immediate steps that should be taken to improve prison conditions and to ensure the survival of detainees until ultimate release and resettlement. The following measures are suggested:

(a) the supply of adequate food to prison camps;

¹ Since this article was written, there has been an encouraging announcement by the Indonesian Government that 29,000 prisoners are to be released by the end of 1969.

(b) adequate supervision to ensure that this food reaches the prisoners;

(c) the sending of medical teams and supplies into camps;

(d) the establishment of a system of inspection of camps by independent authorities;

(e) co-operation with voluntary agencies, both religious and secular, which are prepared to render assistance to prisoners by supplying them with basic amenities.

2. The preparation of an overall scheme for the training, release and resettlement of all those persons against whom no charges can be preferred and for the speedy disposal of the cases in respect of those against whom it is decided to frame specific charges.

There is no doubt that these measures would be very costly, but if the proper priority is given to the problem, it is certain that much can be achieved, particularly with the co-operation of sympathetic governments and of international agencies. Many important non-governmental organisations have recently expressed their concern over the problem of prison conditions and indicated their willingness to assist. 'Amnesty International' has sent observers to Indonesia, who have discussed with the authorities the amelioration of prison conditions and measures for the speedy trial or release of the detainees. It is therefore clear that aid will certainly be forthcoming if the outside world is satisfied that the Indonesian Government genuinely wishes to come to grips with the problem and make its prison camps only a story of the past.

Transfer of Prisoners to Buru Island

The Government recently announced that it proposed to transfer a number of prisoners to Buru, an Island in the Moluccas, a thousand miles away from the Javanese mainland; it also announced that 2,500 political prisoners had in fact already been transferred there. Doubts have been voiced as to whether this method of handling the problem is a satisfactory one and fears have been expressed in many quarters that Buru may well turn out to be a modern Devil's Island. The prisoners involved are Javanese and not Moluccans, and in order to allay doubts the Government will have to satisfy world opinion on a number of points:

1. that living conditions in Buru are satisfactory;
2. that opportunities for earning a livelihood exist;
3. that re-settled persons will have the right to live there with their families;
4. that provision will be made for the education of their children, and
5. most important of all, that their right to personal liberty will be recognised, which includes their right to leave Buru for settlement elsewhere should they wish to do so.

Commission of Investigation

It is suggested that the Government launch an immediate two or three year programme aimed at the ultimate elimination of the prison camps and that it endeavour to enlist the support of the United Nations and its specialised agencies, and other voluntary non-governmental agencies, both within and outside the country, as well as foreign aid to achieve this objective. A practical method of dealing with the vast problem is to set up a number of independent commissions of investigation, composed of persons of standing and integrity, to sift and remove from the mass of Category C cases the very considerable number of persons against whom not even a prima facie case can be made out. Where for reasons of public policy their release could not be made to their own village or district, their resettlement could be worked out with the United Nations Development Program and other aid-giving agencies. Prisoners willing and able to emigrate to other countries should be permitted to do so.

There are many other suggestions that have been made. It remains for all men of good will within the Government to examine these suggestions closely, to enlist assistance from whatever quarter it may be forthcoming and to make a determined effort to eliminate a feature which will otherwise continue to cast a dark shadow on all that the Government may achieve in other fields.

Justice cannot wait, law cannot bend.

Malagasy proverb, reproduced in *Birtright of Man*, prepared under the direction of Jeanne Hersch, Paris, UNESCO, 1969, p. 449.

Latin America

A Crisis for Democracy

In the first issue of *The Review* (March 1969), the International Commission of Jurists expressed its concern about the dangerous swing back to *de facto* military regimes in Latin America following a series of coups d'état towards the end of 1968. With the recent change of government in Brazil and the military coup d'état that overthrew the civilian government of Bolivia, the situation has, in less than a year, taken a serious turn for the worse.

BRAZIL

On 2nd September, the press announced that the President of Brazil, Marshal Arthur da Costa e Silva, was unable to discharge his duties, at least for the time being, due to a stroke that he had had a few days earlier. During the President's incapacity the country was to be governed jointly by the Ministers of the Army, Navy and Air Force. The first act of the new regime was to issue a Proclamation to the nation and to promulgate Institutional Act No. 12. Both documents attempted to justify the outright violation of Articles 79, 80 and 81 of the Constitution, which provide that if the President is unable to discharge his functions or his office becomes vacant, he shall be replaced by the Vice-President. Where the Vice-President cannot assume the Presidency, an order for succession is laid down.

It should be mentioned that Institutional Act No. 5 of 13th December 1968 (granting dictatorial powers to the President)¹ repealed the Constitution in so far as its provisions conflict with those of the Act. The presidential succession, however, is not dealt with in Act No. 5 and is therefore still governed by the Constitution. In its Proclamation, the regime declared that it could not agree to 'transfer the responsibilities of the supreme authority and the supreme commander of the armed forces to other office-holders in accordance with the Constitution', on the grounds that Congress was in recess and security measures were in force in the country. (The recess had been ordered on 13th December 1968 under Institutional Act No. 5, which had just been promulgated. Article 2 of the Act empowers the President to

¹ See *The Review*, No. 1, March 1969.

order the recess of Congress at any time and to legislate by decree in the meantime.) ' For reasons of national security, ' the Proclamation stated, ' it falls to the Ministers of the Navy, Army and Air Force to assume, during the incapacity of the Head of State, the functions for which he is responsible under the Constitution in force. ' Other arguments in the Proclamation, based on the regime's ' commitments to the nation ', are used to justify the legality of their action. No serious legal arguments are put forward.

Institutional Act No. 12 is in similar terms. It reaffirms the Constitution—subject to Institutional Act No. 5, which has rendered the Constitution ineffective. It refers to the (unsolicited) commitments of the armed forces to the nation, and goes on to state that the new regime will exercise the powers of the President during his incapacity and that it will govern by decree. There is also a provision, common to all the decrees of the Brazilian dictatorship, to the effect that any action based directly or indirectly on the Institutional Act or its Supplementary Acts will fall outside the jurisdiction of the ordinary courts.

It was foreseeable that the armed forces would not hand the Presidency over to a civilian in accordance with law. Vice-President Pedro Aleixo is a professor of law who was elected with Marshal Costa e Silva in 1967 in order to make the presidential election appear more democratic. He was never intended to have any greater power than that held in fact by the armed forces.

One of the last paragraphs of the Proclamation calls on the people for their ' comprehension and collaboration ' and states that the Government will take every necessary measure to ensure stability in the country. In practice, this has meant an increase in police repression and severe political persecution. There has been a sharp rise in the number of persons arrested or deprived of their civil rights, including a large group of Deputies and Senators whose willingness to ' collaborate ' with the dictatorship was in doubt.

To add to the seriousness of the situation, there have been allegations from informed sources that torture is being systematically used against political prisoners in the secrecy of the Brazilian gaols. As has been mentioned, all action based on the Institutional Acts is removed from the jurisdiction of the courts. The role of the Judiciary to protect individual rights has thus been rendered negligible. Brazilians are at the mercy of a military dictatorship and a virtually all-powerful police, with the inherent dangers of each.

The military tribunals, which have been given exclusive jurisdiction over all matters relating to the Institutional Acts, do not afford the safeguards that an accused has in the ordinary courts. Their guiding principles for interpretation are the ' aims of the revolution ', and pre-conceived notions of ' national security ', ' the sacred mission of the armed forces ' and ' threats to national institutions '. The mere fact that the executive, legislative and judicial powers are all wielded

by the armed forces means that, even in trials where procedural formalities are observed, the fundamental rights of the individual are inadequately protected.

Another action of the regime has been to amend Article 150 (11) of the Constitution¹ concerning the sentences of death and exile. These penalties had previously only been applicable in times of 'external war'. They may now be applicable in situations of 'adverse psychological warfare' and 'revolutionary or subversive warfare'.

The new position is regulated by Decree No. 898 of 29th September 1969. The first articles of this Decree define its scope in such broad and general terms that they can be extended to cover the slightest act of opposition to the government, and provide a formidable weapon of repression.

Under Article 1 every individual and body corporate is responsible for 'national security' within the limits laid down by the law.

Under Article 2 'national security is a guarantee protecting the national objectives from internal and external hostility'.

Under Article 3 national security includes, in particular, 'measures intended to maintain external and internal security, including the prevention or repression of adverse psychological warfare and of revolutionary or subversive warfare'.

1. Internal security, which is an integral part of national security, relates to threats or hostile pressures of any origin, type or nature that appear or produce an effect in the country.
2. Adverse psychological warfare consists in the use of propaganda or counterpropaganda or in action in the political, economic, psychosocial and military fields aimed at influencing or inciting opinions, emotions, attitudes or behaviour of foreign groups, whether they be hostile, neutral or friendly, against the attainment of the national objectives.

For the purpose of this study, these are the most interesting articles. It should be mentioned however that the entire Decree is based on the notion of 'national security', which, in the words of Article 2, is a guarantee protecting the national objectives from internal or external hostility. Since the 'national objectives' are determined by the dictatorship, action of any kind may be hostile and bring its author before the military tribunals, which are, under Article 7, 'to be guided by the basic notions of national security as defined in the preceding articles'.

On 7th October, General Emilio Garrastazo Medici was named by the military junta as the new President of Brazil. To give the appointment the semblance of a democratic election, the official political party was asked to sponsor the candidacy of General Medici, and Congress, which was in recess, was convened to 'elect' the sole candidate. A

¹ By Institutional Act No. 14 of 5th September 1969. Again the application of this decree and supplementary decrees is removed from the jurisdiction of the ordinary courts.

number of Deputies and Senators had first been deprived of their civil rights and thus of their membership of Congress. Without waiting for the official ratification by Congress, General Medici addressed the nation as President. He promised to restore democracy during his term of office. It is difficult to see how this promise will materialize, since on 30th October a new Constitution, incorporating many of the dictatorial powers which the various Institutional Acts have granted to the Head of State, was promulgated.

BOLIVIA

On 26th September 1969, the President of Bolivia, Luis Adolfo Siles Salinas, was overthrown by a coup d'état directed by the Commander-in-Chief of the armed forces, General Alfredo Ovando Candia.

For some time now the armed forces in Bolivia have had a decisive political influence, which has determined the fate of various governments. This influence has directly contributed on more than one occasion to the innumerable crises that have made Bolivia one of the most unstable countries in Latin America. As a result of this instability, not only has the political development in the country been hampered, but its economic and social development also. The political upheavals have led to bloodshed and have created an atmosphere of hatred which it will be difficult to dispel. Economically, the country, with its vast natural resources, has been badly administered, more often than not for the profit of the few and to the detriment of the rest of the population. The general situation is bleak, characterised by extreme poverty, illiteracy, malnutrition and a high rate of infant mortality.

General Ovando, as the Commander-in-Chief of the armed forces for a number of years, had helped General Barrientos in November 1964 to overthrow President Pas Estenssoro, who had amended the Constitution to enable himself to remain in office for a third term. In May 1965, following serious riots in the tin mines, Ovando became Co-President in the military junta which Barrientos had headed up to then. Although obvious rivalry existed between the two Generals, only Barrientos stood for the Presidency of the Republic, which he won in July 1966. Ovando continued to act as Commander-in-Chief of the armed forces, but his influence was constantly felt and his differences with President Barrientos on major questions were well-known. This was particularly so in the operations led by General Ovando against the guerrillas culminating in the death of Che Guevara and the trial of Régis Debray.

During Barrientos's Presidency, Ovando gradually emerged as the next President of the Republic and it was a foregone conclusion that he would win the 1970 elections. The situation abruptly changed when General Barrientos died in an air crash on 27th April 1969.

His constitutional successor was the Vice-President of the Republic, Luis Adolfo Siles Salinas, a civilian and a professor of law. However, he was only allowed to take office after lengthy discussions with the military chiefs and subject to their 'authorization', obtained after numerous telephone consultations with General Ovando, who was in the United States at the time.

Democracy in Bolivia, before the September coup d'état, was again to be severely tested as the new President encountered opposition at every turn. The most serious was the petition made by the Confederation of Peasants' Trade Unions that Professor Siles should give up the Presidency in favour of General Ovando. The situation was saved only by the determination of the new President. Theoretically he could count on some support from the armed forces, but the ambiguous statements made by General Ovando, who put his interests as a potential candidate before his responsibilities as Commander-in-Chief, hardly guaranteed Mr Siles's position.

Bolivia has been used here to illustrate the instability of democratic institutions in some Latin American countries. Other countries could have been referred to. The irresponsible use of power by demagogues, opportunists and the army has led to a general loss of confidence among the population, who are kept outside the political development of their country and reap no benefits from the system.

Fundamental human rights remain a dead letter. Embodied in the Constitution, with the Constitution they are relegated to a secondary role after each coup d'état. Article 21 of the Universal Declaration of Human Rights,¹ especially Paragraph 3 providing that the 'will of the people shall be the basis of the authority of government', is repeatedly ignored. The right to freedom of opinion and expression, recognised in Article 19, becomes an offence, punishable in most cases under special decrees. Apart from glistening programmes that are never carried out, little is done to implement economic and social rights.

The right to education, which is basic to the Universal Declaration, is in the great majority of countries not being properly implemented. The high rate of illiteracy in Latin America reaches shocking proportions in some countries. This is an important reason for the isolation of large numbers of the population from political events. Because of ignorance, they cannot act as a check on irresponsible government, nor elect the leaders who can best serve the country. In some countries, it is true, illiterates do have the right to vote, but they are prey to unscrupulous local leaders.

¹ *Article 21.* (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right to equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

With General Ovando's overthrow of President Siles, the constitutional stability of Bolivia was upset once more. The stability may have been superficial but it could have provided a sound basis for building an effective democracy.

The new government has published a programme containing some noteworthy economic and social projects, but no reference, unfortunately, to a return to a democratic system of government.

Some comment is necessary on the Government's nationalisation of a foreign oil company, shortly after it came to power. A government has the right and duty to protect the country's natural resources and to take appropriate measures when it considers that the nation is being unfairly exploited by a foreign or national group. It is essential however that the industry nationalised should be run efficiently to ensure that the means of production are used for the direct benefit of the nation. Nationalisation should not serve to excuse or mask arbitrary behaviour or dilatoriness in other less conspicuous but vital and challenging fields. Nationalisation is not an alternative to constructive solutions for other pressing problems, such as the integration of the large peasant population into the country's development and the attainment of a healthy environment, adequate nutrition for children, an equitable distribution of the nation's wealth, an effective system of taxation, the unity of a population aware of its responsibilities and an effective judicial system.

* * *

Democratic governments in many Latin American countries have been unable to keep up with the pace required to ensure the realisation of social justice for all. Little attempt has been made hitherto to analyse and correct their failings. The tremendous potential for reform is often frustrated by the appearance of arbitrary regimes, which immediately suspend fundamental guarantees of individual freedom and build up a system of repression engendering hatred and violence and causing rifts between large segments of the population.

In the difficult period through which Latin America is now passing, jurists must assume their responsibilities without delay. They are the persons best equipped to devise a new form of democracy, free from the many defects that have gradually been acquired and have unfortunately almost come to be identified with the concept itself. In this context reliance must be placed on the jurist's objectivity, a quality which he acquires through his training and experience, and which is so often absent in Latin American politicians.

New Criminal Legislation in Romania

In 1965, Romania adopted a new Constitution, which, as was pointed out at the time,¹ defines in general terms the fundamental rights and duties of citizens such as are to be found in the Universal Declaration of Human Rights. As soon as the Constitution came into force, and even before, the legislature in Romania began to carry out far-reaching reforms in the law. Several of these reforms have been commented on in the *ICJ Bulletin*. In 1966, the law governing agricultural collectives was revised.² In 1967 the Security Police and the Ministry for Home Affairs were reorganised, and citizens were given the right to appeal to the courts against illegal acts of the Administration.³

In 1968, the National Assembly of Romania adopted a new Criminal Code and a new Code of Criminal Procedure. At the same time, two new laws on the organisation of the courts and the procuracy were passed. Romania has now clearly committed herself to implementing the principles in the Constitution and adapting the country's legal system to the requirements of economic and social development today.

The new Criminal Code entered into force on 1st January 1969. It replaced a code of 1937 which had been amended a number of times since the Communists came to power. The final amended version of this earlier code was published in 1960.

A characteristic of the new Code is its systematic approach. It contains 363 articles as opposed to 608 in the former Code (1960 version). In terms of the volume and number of articles, legal commentators in Romania are justly proud of the fact that the new Code is more concise than other European criminal codes, including those of non-socialist countries. In the tradition of European criminal codes, the Romanian Code has two parts: a General Part (154 articles) and a Special Part (209 articles).

¹ See *Bulletin of the ICJ*, No. 23, p. 15.

² See *Bulletin of the ICJ*, No. 30, p. 14.

³ See *Bulletin of the ICJ*, No. 32, p. 43.

The General Part governs the creation, modification and termination of criminal liability. Article 1 defines the criminal law as follows:

The purpose of criminal law is to protect the Socialist Republic of Romania, State sovereignty, independence and unity, socialist property, the individual and his rights, and the legal order in general.

Although the primary purpose of law, which is recognised in the criminal codes of all countries whether Communist or not, is to uphold the political and legal system, the way in which this purpose is now formulated has undergone a substantial change. The protection of the rights of the individual is now included in the definition, and reference to the workers' class has been omitted. The inclusion of the words 'State sovereignty, independence and unity' is also new.

Article 1 sets out the fundamental principles of criminal law which had been abolished in the 1950s, in particular the principle *nullum crimen, nulla poena sine lege*. The fact that from now on only the legislature may determine the acts that will be punishable gives the individual, according to legal writers in Romania, complete protection from an arbitrary administration of justice. 'The inclusion of such a provision in the Code is without question of the greatest importance for the strengthening of legality'.¹

Another characteristic of the Code is that no provision will have retroactive effect, save in the case where this is favourable to the accused (*Articles 14 and 15*).

In new and clearly drafted provisions, the Code defines an offence as an act that constitutes a danger to society, is intentional and is proscribed by law (*Article 17*). A more complete definition of 'guilt' than in the earlier codes is set out in Article 19, which provides that only acts which constitute an offence can give rise to criminal liability. This is a decisive contribution to the 'protection of the individual's rights and freedoms from possible abuse or illegality in the administration of criminal law'.²

There is also a fundamental development in the field of the treatment of offenders. Following the progressive trend of modern penology, the Code does not consider the criminal sanction solely as a means of punishment, but also and above all, as a method of rehabilitation. Article 52 moreover states that 'no punishment shall be such as to cause physical suffering or to degrade the person convicted'.

¹ See Ion Oancea, *The New Criminal Code and the New Code of Criminal Procedure in the Socialist Republic of Romania*, Annals of the Faculty of Law, University of Bucharest, 1969.

² See Oancea, *op. cit.*

The forms of punishment have also been simplified. The following main forms have been maintained: imprisonment from 15 days to 25 years and fines of varying degree. Harsher penalties, such as hard labour or imprisonment under severe conditions, have been eliminated. The death penalty has temporarily been kept as an exceptional sentence for certain crimes of extreme seriousness, such as high treason or the large-scale embezzlement of collective property. The death sentence is not, even in these cases, compulsory. The Code requires the court to exercise its discretion as to the appropriate sentence and provides for measures of rehabilitation, conditional sentences, suspension of sentences and release pending trial.

In cases presenting a very small danger to society, the social responsibility of the offender's work collective may be substituted for the individual's criminal responsibility: this means that the offender's work collective will be asked by the court to undertake his supervision and to aid in his rehabilitation.¹

The Special Part of the Criminal Code lists a smaller number of offences than those given in the earlier Code. Heavy penalties have been kept for political crimes, but penalties for common law offences have been made lighter. The new Code, although inspired by modern ideas, is of course based upon the Marxist-Leninist philosophy, which deals implacably with enemies of the system.

The essential characteristic of the new Code is its concise and clear provisions, which adopt modern concepts of criminology but can, at the same time, be readily understood by the general public and thus readily observed.

The new Code of Criminal Procedure, which came into force at the same time as the Criminal Code, sets out the general principles governing procedure as are to be found in the Universal Declaration and the International Covenant on Civil and Political Rights adopted by the United Nations in 1966. There are two stages in criminal proceedings: the investigation and the trial (*Article 2*). The court is required to ascertain the facts and the surrounding circumstances having regard to the character and culpability of the accused (*Article 3*). No one may be arrested or held in custody during the investigation and trial except in the cases prescribed by law (*Article 5*). The rights of the defence are guaranteed to the accused and to all parties in the proceedings during the trial and also the investigation (*Article 6*).

The Code of Procedure introduces the principle of the presumption of innocence. The judges must weigh each item of evidence in the light of their 'socialist legal conscience' and can only convict if they are convinced of the accused's guilt. No evidence is assigned a priori any particular probative value (*Article 63*). The Code makes illegal

¹ Cf. 'Bulgaria's New Criminal Code', *The Review*, No. 2, p. 6 at p. 8.

the obtention of evidence by force, threats or other duress, as well as by promises and other inducements (*Article 68*). The conscientious application of all these provisions will make impossible any abuse or illegality in the criminal process.

Preventive measures are also defined in the Code; these include police custody, house arrest and preventive detention. Such measures are permissible only in the case of fairly serious offences, punishable by imprisonment, and only if this is necessary to ensure the normal course of the criminal proceedings or to prevent the offender from escaping. Such measures furthermore can only be ordered by the public prosecutor and there is a right of appeal to the courts against detention (*Articles 139 and 140*).

Responsibility for conducting criminal investigations is with the procuracy, the militia (police), the security police and the 'special investigation' unit. Their task, which is carried out under the supervision of the public prosecutor, is to 'detect every offence, indict every offender and ensure that no one is prosecuted in the absence of clear evidence pointing to his guilt'. This principle is to be found in all socialist legislations, but its application has hitherto been inconsistent and all too often ineffective, depending on the country concerned and its stage of political development.

Remedies open to persons convicted are the ordinary right of appeal to a higher court and, after the decision has become final, an action to have the proceedings declared invalid or the case reviewed (*Articles 361-385*). There is a third procedure, called 'extraordinary appeal', which can only be initiated by the public prosecutor or the Minister of Justice (*Article 414*).

The outstanding characteristic of the two Criminal Codes and of the laws on the organisation of the courts and the procuracy is their methodical drafting. The perfection of the administration of justice in Romania, the implementation of socialist legality and the full protection of individual freedom are objectives that were referred to more than once during the debates on the Codes in the National Assembly. Romania's new criminal legislation has the necessary qualities to serve as a starting point towards these objectives.

Zambia: Separation of Powers

The reputation for stability and tolerance that Zambia has enjoyed since independence in 1964 has made her one of the most respected of independent African countries. This reputation has been largely due to the political ability and humanist philosophy of the President, Dr. Kenneth Kaunda, who, despite tribal pressures within Zambia and hostile colonialist regimes on her borders, has consistently deplored racialism in any form.¹

Recent occurrences, however, have indicated a regression in Zambia's adherence to the Rule of Law, and have had unfortunate and serious repercussions outside Zambia itself.

In July of this year, Mr. T. O. Kellock, an English Queen's Counsel, who is also a member of the Bar of Zambia, was declared a prohibited immigrant and given forty-eight hours to leave the country. No explanation was given by the authorities as to why his presence within Zambia was objected to. Some weeks earlier Mr. Kellock, who had been instructed to defend two Asians charged with currency offences, was told that before he could exercise his right of audience before the court, he would require a work permit, which the authorities subsequently refused to grant. An application was then made to the High Court by Mr. Kellock's clients claiming, inter alia, that their constitutional right to counsel had been infringed by the refusal to grant an employment permit. The Chief Justice held that the relationship of client, solicitor and counsel was not one of employment in terms of the Immigration and Deportation Act and that, therefore, no permit was required by law. When Mr. Kellock came to Zambia he was served with papers declaring him a prohibited immigrant.²

No satisfactory explanation has been given for the refusal to allow Mr. Kellock to exercise his right of audience in Zambia, which can thus only appear as a clear breach of a fundamental principle of the Rule of Law: that defence counsel in a criminal case, whatever its nature, should not be interfered with or precluded from carrying out their task.

The second occurrence also took place in July of this year, when a High Court judge quashed the heavy sentences imposed by a magistrate on two Portuguese soldiers who had been found guilty of

¹ See *The Review*, No. 1, p. 20.

² The prohibition has since been withdrawn.

entering Zambia in the uniform of a foreign military force. The judge, Mr. Justice Evans, reviewed the case and set aside the sentence, stating that the offence was a trivial one and merely a technical breach of the law. He ordered the release of the soldiers, who had already spent eighteen days in custody. The soldiers had pleaded guilty in the magistrate's court: the matters put forward on their behalf in mitigation and agreed to by the prosecution, as read with the statement of facts submitted by the prosecution, showed that the soldiers had crossed the border on the invitation of a Zambian official with whom they had been speaking and that, prior to crossing, they had left their arms on their own side of the border. They were then arrested and charged. On review, the Judge said that the situation did not redound to the credit of the Zambian authorities, a statement that was later said by President Kaunda to be political. The President ordered the soldiers to be detained by virtue of powers vested in him under emergency legislation.

The Chief Justice, who was called on by the President to explain the 'political' judgment, sent a written report to the President in which he refused to accept that the judgment was in any sense a political one or motivated by political considerations. Chief Justice Skinner said that he was satisfied that Mr. Justice Evans had acted on the principles of justice. He also pointed out that it is one of the functions of the judiciary to criticise the action of the executive or its individual servants whenever the need arises. The Chief Justice went on to say that, if that right was denied, then the courts could no longer effectively carry out their duties.

The interchange between the President and the Chief Justice was followed by organised and widespread demonstrations against the judiciary, with racial undertones, throughout Zambia.¹ An attack was made on the High Court at Lusaka by the Zambia Youth Service, a uniformed force of the Republic; the building was broken into and members of the judiciary had to barricade themselves in chambers. Demonstrations were held throughout the country and several magistrates' court buildings were broken into. Posters grossly abusive of members of the judiciary were carried by the demonstrators, and offensive statements concerning the Chief Justice and Mr. Justice Evans were made by officials of the Government Party. Mr. Justice Evans resigned in protest, Chief Justice Skinner left Zambia on indefinite sick leave and a third judge, Mr. Justice Whelan, announced his resignation.

The President condemned the violence and apologised to the judges, but he did not revoke his estimation of Mr. Justice Evans' judgment. The Portuguese soldiers continued to be held as hostages until the end of September, when they were exchanged for three Zambians seized by the Portuguese authorities in Mozambique. To

¹ Almost all the members of the higher judiciary in Zambia are white.

the best of our knowledge, no criminal proceedings have been brought against the members of the Zambia Youth Service who broke into the High Court at Lusaka or against members of the public concerned in the malicious damage to other court buildings.

In September it was officially announced that Chief Justice Skinner had resigned. In his letter of resignation Mr. Skinner stressed the fact that Zambia had lived under a strain since the Unilateral Declaration of Independence in Rhodesia and the Portuguese bombing of Zambian villages. However, he felt that the people of Zambia had been led to believe that he was disloyal to the country and, as a result, would not have confidence in a judiciary headed by him; the Rule of Law would not prosper in Zambia if he remained as Chief Justice. Mr. Skinner went on to say: 'Confidence in the judiciary is a delicate bloom in Africa and I am not going to risk destroying its growth in Zambia.'

These events were all the more unfortunate as Mr. Skinner, who is himself a Zambian citizen by registration, had played an important role in the building up of the new State of Zambia both as a Minister and Attorney-General, and has always been a strong opponent of colonialism and racial discrimination in Africa.

The Chief Justice's attitude shows a real understanding of the tensions within Zambia at present and the causes behind such tensions. However, the fact remains that this attack on the judiciary could not have come at a worse time, and has seriously undermined Zambia's international standing. When the crisis with the judiciary occurred, the South African Government had just pushed through Parliament the notorious General Law Amendment Act and was hard pressed to defend the widespread criticism of the severe limitations it introduced on the independence of the judiciary.¹ It fell with delight on the news from Zambia. How can one criticise the Rule of Law in South Africa, it asked, when an independent African country defies it so blatantly?

Certainly one cannot demand one standard for white racist or colonialist regimes and another for independent African countries. The basic principles of the Rule of Law must operate equally in all countries, black or white, east or west. President Kaunda's subsequent assurance that the judiciary will have the Government's support in carrying out its responsibilities indicates awareness of this truth. The President has often likened the judiciary to a mirror in which the executive and legislative arms of government can be reflected. It would be unfortunate if the mirror is to be cracked when the reflection does not please those who gaze into it. It is the responsibility of the President and his Government to see that the mirror remains unbroken. This can only be done by respect for the independence of the judiciary.

¹ See *The Review*, No. 3, pp. 23-24.

Special Study

PROGRESS IN INTERNATIONAL LAW: OUTER SPACE AND INTERNATIONAL ACCOMMODATION

by

HOWARD J. TAUBENFELD *

In twelve brief years, human technology has moved man from the orbiting of 'primitive' (if awe-inspiring) satellites to the capacity to live and work in outer space and even to visit our nearest neighbor in the solar system, the moon. Progress in taming the nations and making the earth a less dangerous place on which to live has been patently far slower. Yet, during this period, in at least a few areas—the sea law conventions of 1958, the Antarctic Treaty of 1959, the Test Ban Treaty of 1963, the Human Rights conventions, the development of law relating to activities in outer space and others—there has been some progress in international law and accommodation.¹ While it would be unwise to place great emphasis on the outer space arena either for the sake of progress made there to date or as a highly useful model for arrangements dealing with earth itself, it seems reasonable to note the current interesting state

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¹ There is a very substantial literature on the general problems of international law and space activities. See, *inter alia*, Lipson & Katzenbach, *The Law of Outer Space* (1961); McDougal, Lasswell & Vlasic, *Law and Public Order in Space* (1963); Jenks, *Space Law* (1965); Matte, *Aerospace Law* (1969); McMahon, 'Legal Aspects of Outer Space', (1962) *Brit. Yrbk. Int'l L.* 339; Note 'National Sovereignty of Outer Space', 74 *Harv. L. Rev.* 1154 (1961); Jessup & Taubenfeld, *Controls for Outer Space* (1959); Haley, *Space Law and Government* (1963); Kovalev & Cheprov, *Toward Cosmic Law* (Na Puti k Kosmiches Komu Pravu) (1962); Levy, *Space: Its Impact on Man and Society* (1965); Taubenfeld, *Space and Society* (1964); Cooper, *Explorations in Aerospace Law* (1968); Christol, *The International Law of Outer Space* (1966).

of international agreement concerning human activities in outer space.

While to date the nations have been uninterested in defining the inner limits of outer space, solemn statements of the nations, unanimously adopted resolutions of the UN General Assembly, and several major treaties already place important limitations on sovereign activities in and on 'territorial' claims to outer space and the celestial bodies. The emerging decentralized regime is one of self-denial and is self-policed; the nations have firmly resisted creating any comprehensive, overall regime which would include the placing of authority and control for outer space activities in any international organization. This regime may not stand up if the world's self-defending states change their views as to the value to them of special areas of outer space. Yet the scope of agreement is impressive.

Since there has been much written about these matters, it seems necessary only to note rather briefly the extent of the self-imposed restraints on states. First, no state may make a claim to sovereignty over any part of outer space or the celestial bodies by dint of any act of any sort. This view has been uniformly expressed by the leaders of all space powers, is embodied in the major UN resolution on outer space of 1963¹ and is the basis of Article 2 of the Outer Space Treaty of 1967,² now in force on a worldwide basis, which provides that 'outer space, including the moon and other celestial bodies is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means'. While it might be presumptuous as well as physically absurd for a state to attempt to lay claim to 'outer space' by projecting its borders outward in some fashion, celestial bodies might in time be occupied and used in ways which have traditionally given rise to claims of

¹ Resolution 1962 (XVIII), of 1963. The United States has taken the position that the principles contained in such unanimously adopted resolutions constitute present law. See, e.g., statement of Secretary of State Rusk, Aug. 6, 1962, *State Press Release, No. 490* Aug. 6, 1962.

² Annexed to UN Doc. A/Res/2222(XXI). The Treaty is also found, e.g., in U.S. *TIAS* 5433 and UN *Monthly Chronicle*, Vol. IV, No. 1, p. 42. For an article-by-article analysis, see 'Treaty on Outer Space', *Hearings Before the Senate Committee on Foreign Relations*, 90th Cong., 1st Sess., on Exec. D, (Mar. 7, 13, 1967, & Apr. 12, 1967). See also 'Treaty on Principles . . . Analysis and Background Data', *Staff Report* prepared for the use of the Senate Committee on Aeronautical and Space Sciences, 90th Cong., 1st Sess. (March 1967).

See generally Dembling and Arons, 'The Evolution of the Outer Space Treaty', 33 *J. Air L. & Comm.* 419 (1967); Wehringer, 'The Treaty on Outer Space', 54 *A.B.A.J.* 586 (1968); Menter, 'The Developing Law for Outer Space', 53 *A.B.A.J.* 703 (1967); Cooper, 'Some Crucial Questions About the Space Treaty', 48 *A.F./Space Digest* 104 (Mar. 1967); Finch, 'Outer Space for "Peaceful Purposes"', 54 *A.B.A.J.* 365 (1968); Vlastic, 'Space Treaty: A preliminary Evaluation', 55 *Calif. L. R.* 507 (1967); Cheng, 'Le Traité de 1967 sur l'espace', *Journal du Droit International* 532, 95th yr., No. 3 (July-Sept., 1968). For a Soviet view, see A. Peradov & Y. Ryabakov, 'First Space Treaty', 13 *Int'l Aff.* 21-26 (Moscow, Mar. 1967).

sovereign 'ownership' on earth.¹ For space itself, and for the celestial bodies, such claims would now be violative of international legal commitments.

Second, most states have now given up their rights to perform certain kinds of activities in outer space, however defined, and on the celestial bodies. This approach by functional limitation makes the need for boundary lines less pressing, but it is not without its own difficulties since the states are not always in agreement on the definition of the function in question.

Thus far, most nations have agreed that international law, including the United Nations Charter with its limitations on the right to use force, applies to their activities in outer space.² General Assembly Resolution 1721 (XVI) commended to states for their guidance the principle that 'international law, including the United Nations Charter, applies to outer space and celestial bodies...'; and the General Assembly's Declaration of Legal Principles of 1963 (Resolution 1962 [XVII]) provided:

4. The activities of States in the exploration and use of outer space shall be carried on in accordance with international law, including the Charter of the United Nations...

Again, Article III of the 1967 Space Treaty states:

States Parties to the Treaty shall carry on activities in the exploration and use of outer space, including the moon and other celestial bodies, in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding.

The nations have also agreed that outer space is freely open for the peaceful use of all nations and that an orbital space vehicle on a peaceful mission in outer space is free of the jurisdiction of the subjacent state. In the Nuclear Test Ban Treaty of 1963,³ they agreed

¹ On the projection possibilities, and on the 'absurdity', see Jessup & Taubenfeld, *op cit supra* note 1 on p. 29, pp. 205-7; Korovin, 'International Status of Cosmic Space', 5 *Int'l Aff.* 53-59 (Moscow, Jan. 1959); Jenks, 'International Law and Activities in Space', 5 *Int'l & Comp. L.Q.* 99, 103-4 (1956).

² That international law in general applies to outer space activities, see *inter alia*, Jenks, *Space Law*, Chap. 25 (1965); Katzenbach, 'The Law in Outer Space', in *Space: Its Impact on Man and Society*, 69 (Levy ed. 1965); Korovin, 'International Status of Cosmic Space', 5 *Int'l Aff.* 53 (Moscow, Jan. 1959).

For statements of national spokesmen, see, e.g., statement of Loftus Becker, May 7, 1959, before the UN Ad Hoc Committee on the Peaceful Uses of Outer Space, U.S.—UN Press Release, No. 3179 2-3 (May 7, 1959), 40 *Dept. State Bull.*, No. 1042, 885-86 (June 15, 1959); Report of the Ad Hoc Committee, UN Doc. A/4141, July 14, 1959, at 62; statement of the Indian representative, UN Doc. A/C.1/PV. 1213 at 3p, 38, 40 (Dec. 7, 1961).

³ In 1963, most of the nations of the world agreed to a Nuclear Test Ban Treaty which included a ban on tests '(a) in the atmosphere; beyond its limits, including outer space...'. Two major powers, France and the People's Republic of China, are not parties. For parties to the treaty, the debate over the permissibility of high-altitude nuclear tests is now moot, but the issue is not at all a dead one.

The treaty is in, e.g., U.S. TIAS 5433. On the treaty and outer space activities, see e.g., Taubenfeld & Taubenfeld, 'Man and Space: Potentials, Politics, Legal Controls', *Space and Society* 1, 23ff (Taubenfeld, ed., 1964).

not to test nuclear weapons in outer space (or in the atmosphere). In the 1967 Outer Space Treaty they agreed not to place weapons of mass destruction in orbit around the earth or to station them on the celestial bodies or in outer space.¹

The question of definition remains. Thus, to the Soviet Union and others, 'peaceful' has been said to mean 'non-military', while to the United States and others it means 'non-aggressive'.² In fact both major space powers have relied heavily on military officers and military support for space operations and both apparently conduct military operations (observation, communications and navigation facilities) on a regular basis. The 1967 Outer Space Treaty, like the Antarctic Treaty of 1959 before it, expressly recognizes the propriety of the use of military personnel for certain peaceful purposes. Thus while barring orbiting weapons, the 1967 Treaty goes on, in Article IV, to state:

The moon and other celestial bodies shall be used by all States Parties to the Treaty exclusively for peaceful purposes. The establishment of military bases, installations and fortifications, the testing of any type of weapons and the conduct of military maneuvers on celestial bodies shall be forbidden. The use of military personnel for scientific research or for any other peaceful purposes shall not be prohibited. The use of any equipment or facility necessary for peaceful exploration of the moon and other celestial bodies shall also not be prohibited.

In addition, the states have expressly retained the right to exercise control over personnel and space objects on a non-territorial basis. Nations too retain ownership of their space vehicles and equipment. They may also limit access to their bases on celestial bodies to some degree, in contrast with the regime of completely open inspection in the Antarctic. A concomitant of this continuing right of control is the duty to compensate others for damage caused by space activities.³

The 1967 Space Treaty expressly states, for example, in Article VIII, that:

A State Party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body. Ownership of objects launched into outer space, in-

¹ Article IV of the 1967 Outer Space Treaty provides expressly that: 'States Parties to the Treaty undertake not to place in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner.'

² Note that all United States missions are considered by the United States to be 'peaceful'. Thus, Edward G. Welsh, Executive Secretary of the National Space Council, stated: 'All of our programs are peaceful. The Defense Department's activities are to maintain the peace; NASA's are to enable us to live better in peace.' See *Missiles and Rockets*, Jan. 8, 1962 at 12. The Soviet Union makes precisely similar claims. See Crane, in *Soviet Attitude Toward International Space Law*, 56 *Am. J. Int'l L.* 685 (1962).

³ A treaty on liability is still in the drafting stage at the United Nations.

cluding objects landed or constructed on a celestial body, and of their component parts, is not affected by their presence in outer space or on a celestial body or by their return to the earth. Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State, which shall, upon request, furnish identifying data prior to their return.

The responsibilities imposed on the using states to give information about their activities and access to their bases are also contained in the 1967 Treaty. Thus we find:

Article XI

In order to promote international co-operation in the peaceful exploration and use of outer space, States Parties to the Treaty conducting activities in outer space, including the moon and other celestial bodies, agree to inform the Secretary-General of the United Nations as well as the public and the international scientific community, *to the great extent feasible and practicable*, of the nature, conduct, locations and results of such activities... (Italics added).

Article XII

All stations, installations, equipment and space vehicles on the moon and other celestial bodies shall be open to representatives of other States Parties to the Treaty on a basis of reciprocity. *Such representatives shall give reasonable advance notice of a projected visit*, in order that appropriate consultations may be held and that maximum precautions may be taken to assure safety and to avoid interference with normal operations in the facility to be visited. (Italics added).

The state thus retains, perhaps inevitably in this potentially strategic and valuable area, a considerable degree of exclusionary capability.

Moreover, the Agreement on the Rescue and Return of Astronauts and the Return of Objects Launched into Outer Space,¹ signed on April 22, 1968 by 44 nations and now in force, provides in its Article 5 that objects launched into outer space or their component parts, when found in another state or anywhere beyond the territorial jurisdiction of the 'launching authority', 'shall be returned to or held at the disposal of the representatives of the launching authority...' While there is a duty to bear expenses incurred in recovering and returning a space object, this treaty makes it clear that the object at all times remains the property of the launching

¹ The Agreement is annexed to G.A. Res. (XXII), Dec. 19, 1967, printed in 58 *U.S. Dept. State Bull.*, 85 (1968) and *UN Monthly Chronicle*, Vol. V, No. 1, p. 20. See Dembling and Arons, 'The Treaty on Rescue and Return of Astronauts and Space Objects', 9 *Wm. & Mary L. R.* 630 (1958). On the treaty see also Report of the Legal Sub-Committee of the UN's Space Committee, UN Doc. A/AC. 105/43 (15 Dec. 1967).

The term 'launching authority' is defined in Article 6.

authority. As for personnel, the question of jurisdiction over persons and acts on board a space vehicle or at a space station is closely related to the well-known problems of control over nationals outside the national territory and of jurisdiction over ships, aircraft, and bases in remote, 'non-national' areas such as Antarctica. UN Resolution 1962 (XVIII) of 1963 provided, *inter alia*, in Para. 7 that 'the State on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, *and any personnel thereon*, while in outer space' (Italics added). Article VIII of the 1967 Space Treaty uses the same language emphasized above.

Of interest also is the high regard in which astronauts are currently held as reflected in Article V of the Space Treaty, which provides:

States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space and shall render them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas. When astronauts make such a landing, they shall be safely and promptly returned to the State of registry of their space vehicles.

The first four Articles of the 1968 Agreement on Rescue and Return elaborate on these principles; the emphasis on humanitarian concern and on the human rights of the astronauts is clear. Unlike the provisions respecting the return of space vehicles, the issue of reimbursement for rescue operations is not raised in the Agreement. The duty of notification is made clear and express; all personnel aboard space vehicles are covered; states are to take 'all possible steps' to effect a rescue; 'unintended' as well as landings due to accident are included; and rescue operations on the high seas and 'any other place not under the jurisdiction of any State', which would seem to cover Antarctica, and the celestial bodies, are included. Moreover, the duty to return is *unqualified*, though no specific definition of a 'prompt' return is included. While critics have raised other questions about the Agreement as well, its general intent and the scope of its protection seem broad and clear.

As to liability, in addition to the acceptance of 'international responsibility' placed on states for national activities in outer space by Article VI of the 1967 Outer Space Treaty, Article VII is quite specific in providing that:

Each State Party to the Treaty that launches or procures the launching of an object into outer space, including the moon and other celestial bodies, and each State Party from whose territory or facility an object is launched, is internationally liable for damage to another State Party to the Treaty or to its natural or juridical persons by such object or its component parts on the earth, in air space or in outer space, including the moon and other celestial bodies.

Negotiations on a general treaty dealing expressly with the liability problem are still in progress.

States have by no means given up their ability to use areas of space and areas of the celestial bodies as if they were the territorial sovereign, though without making any claim to sovereignty. There is already a long history of effective preemptions of areas on earth without sovereign claims. These include common, if usually temporary, uses of such non-national areas as the high seas for fleet maneuvers and nuclear and missile testing and of bases in unclaimed areas, as in Antarctica, often for longer periods. Nations normally exclude or seek to exclude others while operations are in progress, often, admittedly, for the intruder's own safety. The ability of states administering Mandates and Trust Territories, without claims of sovereignty, to exclude others also make it clear that, even without claims to sovereignty, if technological change and discovery make acquisition in space possible and attractive, it is likely that there will be grave difficulty in asserting an international interest or direct international control over major nations which establish preemptive positions, despite the 1967 treaty.¹ In history, states have at times asserted exclusive rights to use the resources of an area, as has been true for fish on the high seas and may be for mineral and other resources in space and particularly, in time, on the celestial bodies. To avoid conflict, some writers have urged that title to space resources be placed in an international organization which could then issue licenses, etc.; but these questions, while potentially of grave importance in some foreseeable circumstances, are not covered in any present international arrangements or negotiations.² The question of resource appropriation remains open today and, if important resources become available, a conflict over shares seems likely. Perhaps as a substitute for the older tradition of claims, we may now be witnessing the development of a demand not for sovereignty but for what Nicholas De B. Katzenbach has called the recognition of the 'primary rights of a nation in a localized facility created by its own efforts'.³

We must also note that no state has given up the right of self-defense wherever it sees a threat to its national security. In agreeing that the UN Charter applied to space activities, it was pointed out by statesmen that this included Article 51, the 'inherent' right of self-defense, at least against armed attack.⁴ Serious threats arising from hostile acts in outer space will be countered just as they would

¹ See generally Jessup and Taubenfeld, *Controls for Outer Space and the Antarctic Analogy* (1959), passim, esp. Part 1.

² See generally e.g., McDougal, Lasswell & Vlasic, *op cit supra* note 1 on p. 29., Chap. 7, passim; McDougal, Lasswell, Vlasic & Smith, 'The Enjoyment and Acquisition of resources in Outer Space', 111 *U. Penn. L. Rev.* 521 ff. (Mar. 1963).

³ Nicholas De B. Katzenbach, 'The Law in Outer Space', in Levy, *op cit*, 69, 78.

⁴ Becker, *op cit supra* at note 2 on p. 31, for example, expressly stated that: 'Similarly, Article 51 of the Charter which recognizes as a principle of international law the inherent right of individual or collective self-defense against armed attack is not restricted to the terrestrial arena.'

be from any other quarter.¹ By analogy, for example, the United States (and Canada) have insisted since the 1940s that the needs of self-defense permit them to create air-defense identification zones in air space far out over the high seas.² National spokesmen have been uniformly clear that self-defense requirements will be pursued with respect to outer space activities, even if no claims to sovereignty are made. A United States spokesman stated years ago that:

The United States is prepared at all times to react to protect itself against an armed attack, whether that attack originates in outer space or passes through outer space in order to reach the United States.³

And a Soviet commentator has similarly declared that:

In case of need the Soviet Union will be able to protect its security against any encroachments from outer space just as successfully as it has done with respect to air space... Such action will be fully justified under the existing rules of international law and the United Nations Charter.⁴

This is predictable. Indeed, in the event of a major threat to a state's survival whether from outer space or elsewhere, and whether or not it constitutes an armed attack in the terms of the Charter's Article 51, we may have to accept the idea, suggested by Dean Acheson, that 'law simply does not deal with such questions of ultimate power . . . The survival of states is not a matter of law.'⁵

One further point. No state has given up the right to exercise control over 'space' vehicles while the vehicle is in that nation's airspace. Some authors have urged that a right of innocent passage for nonhostile space vehicles through national airspace exists, or should exist, but it seems unlikely that there now is such a right or that one is likely to be developed on a general basis. No such right now exists for other devices while in airspace nor is there any

¹ On rights of self-defense, even without claims to sovereignty see e.g., Craig, 'National Sovereignty at High Altitudes', 24 *J. Air L. and Comm.* 384, 388 (1957). On Soviet practices, see e.g., Lissitzyn, 'Treatment of Aerial Intruders in Recent Practice and International Law', 47 *Am. J. Int'l L.* 559-89 (1953); Lissitzyn, 'Some Legal Implications of the U-2 and RB-47 Incidents', 56 *Am. J. Int'l L.* 135 (1962):

² On the air defense identification zones, see e.g., U.S. Civil Aeronautics Act of 1938, para. 1201, as amended Sept. 9, 1950, 64 *Statutes at Large* 825, 49 *USC* Paras. 701, 703; 15 *F.R.* 9180, 20 *F.R.* 8184, 14 *CFR* 620, 621-23. On the 1955 Regulations, see Murchison, *The Contiguous Air Space Zone in International Law* 79-94, Appendixes 1 and II (Canadian Dept. of Nat'l Defense, 1956); U.S. Naval War College, *International Law Situation and Documents 1956*, 577 ff. (1957); Cooper, 'Space Above the Seas', *JAGJ* (Navy) 8 ff. esp. 31 (Feb. 1959); Note, 'Legal Aspects of Reconnaissance in Airspace and Outer Space', 61 *Columbia L. R.* 1070, 1087-95 (1961); Note, 'ADIZ, International Law, and Contiguous Air Space', 2 *Harv. Int'l L. Club* 1 (1960).

³ Becker, 'Major Aspects of the Problem of Outer Space', 38 *Dept. State Bull.* 962, 965 (June 9, 1958).

⁴ Zhukov, 'Space Espionage Plans and International Law', 6 *Int'l Aff.* 53, 57 (Moscow, Oct. 1960).

⁵ Remarks of former Secretary of State Acheson, *Proceedings, Amer. Soc. Int'l L.* 13, 14 (1963).

general right of 'transit' across another nation in international law. Those states which have considered the matter, such as the United States, have been clear that *all* vehicles in national airspace, including missiles, rockets, balloons and all other devices, *are* subject to national jurisdiction and control.

In addition, while the airspace jurisdiction of, for example, the US Federal Aviation Agency, is generally limited to areas of United States' sovereignty, the Agency would presumably also exercise control over vehicles in outer space that are approaching the United States with intent to enter United States' airspace. This control could be similar to that currently exercised over aircraft above the high seas flying an airway into the United States but would not extend to a spacecraft in outer space which does not intend to and does not enter United States' airspace.¹

While a concept of free innocent passage might help the progress of the development of space capabilities for some small nations, the problem of identifying the vehicle, assuring that its passage is in fact 'innocent' and/or that its entry and descent are due to accident or distress, will prove difficult both in legal definition and in practice. Except for the exemptions and rights provided in the Agreement on Rescue and Return, noted above, states appear likely to continue to insist on treating spacecraft in airspace as subject to national jurisdiction. Moreover, as long as the security issue remains paramount, in view of the short reaction time available, states may simply feel obliged to treat all low flying space vehicles, at least those on incoming trajectories, as potential threats, without some form of satisfactory advance assurances.

To sum up, the existing international law regime governing man's activities in outer space already places a general, self-policed prohibition on the extension of national 'territory' beyond the superjacent airspace in which national sovereignty is uniformly recognized. Neither the outward limit of airspace nor the inner limit of outer space has been collectively defined but, since it seems to be accepted that all non-powered satellites are orbiting in 'outer space' and are outside the territory of any state, the extent of national 'territory' is limited to something under a hundred miles at most at this time.

In outer space, all nations are free to conduct peaceful activities; the states retain jurisdiction, ownership and control over their personnel and vehicles while in outer space. States have accepted responsibility for their acts in outer space. Each retains the right to react to threats wherever they originate. Most have agreed not to conduct nuclear tests or to create truly military bases in space or on

¹ See *Senate Report 1811*, 85th Cong., 2nd Sess., 20 (1958); Menter, 'Government Regulations of Space Activities', 7 *AF JAG L. Rev.* 5, 12 (Sept.-Oct. 1965); U.S. Federal Aviation Agency. *Press Release 66-83* (Aug. 23, 1966).

the celestial bodies or to orbit weapons of mass destruction. The lives and rights of astronauts have been protected.

In time, more satisfactory definitions and further internationalization may be required to avoid conflict and confusion of regimes; but for the near-run the now-established legal regime, provided the states carry it out in good faith, is probably adequate to prevent territorial rivalries outward and to permit the achievement, with dignity and in peace, of man's necessarily limited capabilities in outer space activities.

This one belongs to us or [that one] to others — such is the consideration of the petty-minded. For the magnanimous, on the other hand, the whole earth, verily, is their family.

Subhàsita-Ratnabhàndàgàra, Sanskrit, reproduced in *Birthright of Man*, prepared under the direction of Jeanne Hersch, Paris, UNESCO, 1969, p. 507.

Judicial Application of the Rule of Law

APPLICATIONS BEFORE EUROPEAN COMMISSION OF HUMAN RIGHTS AGAINST GREECE

by

LUCIAN G. WEERAMANTRY *

The applications to the European Commission of Human Rights made by the Governments of Denmark, Norway, Sweden and the Netherlands against the Government of Greece are of unusual interest not only on account of the rarity of applications by State against State under the European Convention on Human Rights, but also because these applications allege not merely the violation of a particular fundamental right guaranteed by the Convention but a general violation by the Greek Government of several such fundamental rights¹. Although the Commission's opinion on the merits is not yet known, several important and far-reaching decisions have been made, to which attention will be drawn below.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Claims of the Applicants

The applications of the Governments of Denmark, Norway and Sweden, all made on September 20, 1967, are identical, while the submissions made by the Government of the Netherlands in its application of September 27, 1967 correspond in substance to those of the three other Governments. The submissions by the four Governments were therefore taken together.

The Applicants referred to the change of government in Greece on April 21, 1967 and submitted that the suspension for an indefinite period of time of certain provisions of the Greek Constitution

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¹ Since the coup d'état in April 1967, the International Commission of Jurists has from time to time published statements and articles on Greece, a list of which is given at the end of this article.

relating to human rights and fundamental freedoms violated the following provisions of the European Convention: Article 5, guaranteeing the right to personal liberty and security; Article 6, the right to a fair trial by independent and impartial tribunals in criminal as well as civil cases; Article 8, the right to respect for a person's private and family life, his home and his correspondence; Article 9, the right to freedom of thought, conscience and religion; Article 10, the right to freedom of expression; Article 11, the right to the freedoms of peaceful assembly and association; Article 13, the right to an effective remedy against violations of the above-mentioned rights and freedoms; Article 14, providing that such rights and freedoms shall be enjoyed without discrimination on any ground including that of a person's political opinion.

It was also pointed out that parliamentary elections, which should have taken place on May 29, 1967, had been cancelled by the new Greek Government.

The Applicants further referred to various official and unofficial statements which showed the grave situation in Greece in regard to fundamental freedoms. In particular, they stated that political parties and ordinary political activities had been prohibited and that a state of siege was maintained upholding courts martial and similar extraordinary courts; that thousands of persons had been imprisoned for long periods without being brought before a competent legal authority and many persons had been sentenced by courts martial or extraordinary penal commissions for their political opinion; that the rights to assemble and to associate freely with others had been abolished and that the right to freedom of expression had been suppressed; and lastly, that censorship had been applied to the press and private communications.

The Applicants also referred to Resolution 346 (1967) of June 23, 1967 by the Consultative Assembly of the Council of Europe, expressing 'its grave concern at the present situation in Greece and at the many serious reported violations of human rights and fundamental freedoms' and expressing the hope that 'the Governments of the Contracting Parties to the European Convention on Human Rights refer the Greek case either separately or jointly to the European Commission of Human Rights in accordance with Article 24 of the Convention'.

The Greek Government's Derogation

The Greek Government had given a notice of derogation under Article 15 (1) of the Convention, which reads:

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such

measures are not inconsistent with its other obligations under international law.

The Applicants submitted that the Respondent Government had failed to show that the strict requirements of this provision had been satisfied. The Commission postponed decision on this question, but went on to consider (see immediately below) an argument from the Greek Government, which, if accepted, would allow a State Party to derogate from its obligations under the Convention without having to comply with Article 25, which not only imposes strict requirements governing derogation but also limits the rights which can be derogated from.

Are Acts of a Revolutionary Government Immune from Control?

In its observations of December 16, 1967 on the admissibility of the applications, the Respondent Government contested the competence of the Commission in the present case. It argued that any right of control by the Commission presupposed a legal Government constituted according to the Constitution. The present Greek Government, however, was the product of a revolution. Admittedly a revolutionary government was bound by the international obligations entered into by its predecessors. But the actions by which it maintained itself in power could not logically be subject to the control of the Commission, any more than the reasons justifying the revolution.

The Respondent Government submitted that, in most cases, a revolutionary government would find itself obliged to suspend temporarily, if not all the rights protected by the Convention, at least the greater part of them. Generally speaking, a revolution created such a disturbance in the life of a State that it seemed meaningless to try to assess the actions of a revolutionary government by the same criteria as would be applicable in normal circumstances or in the case of a simple public emergency threatening the life of the nation within the meaning of Article 15.

The Respondent Government also pointed out that the Commission, when applying Article 15 of the Convention, had recognised the right of governments to enjoy a 'margin of appreciation' in deciding whether or not a public emergency existed that did in fact threaten the life of the nation and what, if any, exceptional measures were required. In the *Lawless Case*,¹ a member of the Commission had observed that the government was in the best position to decide what measures should be taken to deal with an emergency. This observation, which concerned a constitutional government, applied *a fortiori* to a government that had come to power through a revolution.

¹ *Lawless v. Ireland*, Application No. 332/57.

The Commission held¹ that to say that it could not examine acts of a revolutionary government had no basis in international law. Such a position would also clearly contradict Article 15 of the Convention read with Article 19 (which sets up the European Commission and European Court of Human Rights to ensure the observance of the engagements undertaken by the High Contracting Parties), Article 24 (which enables a High Contracting Party to refer to the Commission an alleged breach of the provisions of the Convention by another High Contracting Party) and Article 25 (which relates to the right of the Commission to receive petitions from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties). The Commission therefore held that it was competent to examine the acts of governments even in political situations of an extraordinary character such as after a revolution; indeed it was often 'in times of disturbances and danger which may well have their source in political tension' that most fundamental guarantees of the Convention assumed their greatest importance.²

Where Violations of Convention are Systematic, Exhaustion of Local Remedies Rule Inapplicable

The Commission further held that the rule requiring the exhaustion of local remedies under Articles 26 and 27(3) of the Convention was, according to the generally recognised rules of international law, inapplicable where the object of the applications was to determine the compatibility with the Convention of legislative measures and administrative practices in Greece. In other words, where there was a systematic violation of the Convention through legislation or executive action, the rule relating to the exhaustion of local remedies was inapplicable. This was the basis of a later submission of the Applicants, which is dealt with next.

New Allegations and the Exhaustion of Local Remedies Rule

In written observations of March 15 and May 13, 1968, three of the Applicant Governments (Denmark, Norway and Sweden) made certain fresh allegations against Greece involving violations of Article 3, which prohibits torture and inhuman treatment, Article 7, which prohibits retroactive legislation and heavier punishment than that imposed at the time the offence was committed, Article 1 of the First Additional Protocol to the Convention, which prohibits deprivation of personal possessions except in the public interest, and

¹ Decision of January 24, 1968, on Admissibility of Applications. See *Collection of Decisions of the European Commission of Human Rights*, Vol. 25, pp. 112-116.

² See statement by the Commission's principal delegate before the Court in the *Lawless Case*, *supra*.

Article 3 of the Protocol, by which the High Contracting Parties undertake to hold free elections at reasonable intervals.

In regard to Article 3 of the Convention, the three Applicants referred to many instances of ill-treatment, which they said showed the existence of an administrative practice of torture and, therefore, in conformity with the Commission's decision of January 24, there was no need to show that local remedies had been exhausted. Alternatively, they submitted that, even if they had not proved torture as an administrative practice, the remedies available in Greece were inadequate. The guarantee of a fair trial had been suspended and there were many against whom political action had been taken who had no right of appeal to a Court of law. The Applicants further stated that lawyers were afraid to assume the defence of political prisoners.

The Greek Government answered that the term 'administrative practice' had been used by the Commission in the sense of 'legislative measures'. An 'administrative practice' was not conceivable save in the framework of specific legislation or custom. As for torture, since it was expressly prohibited by Greek law, one could not speak of it as an 'administrative practice' in Greece. The Greek Government also gave a list of remedies that were available and argued that they provided adequate redress.

The Respondent Government also submitted that the applications should be declared inadmissible because no *prima facie* proof of the allegations had been established. The Commission, however, held that no *prima facie* proof was necessary at that stage, as the article¹ declaring applications that were 'manifestly ill-founded' to be inadmissible did not apply to State applications.

Legal Remedies Available in Greece Inadequate

The Commission held that the Applicants had not, at that stage, offered substantial evidence of an administrative practice of torture and that the rule requiring exhaustion of local remedies could not therefore be excluded on that ground.

The Commission, however, went on to hold that the remedies available in Greece were inadequate, since persons detained under Obligatory Law No. 165 were not allowed to appeal to the Courts, and a number of constitutional guarantees relating to the functioning of the ordinary Courts and the procedural rights of individuals had been indefinitely suspended by Royal Decree No. 280 of April 21, 1967. Furthermore although, since the applications had been lodged, the jurisdiction of the ordinary Courts had been partially restored in criminal cases, the independence of the Judiciary had been seriously affected by the suspension of the President of the Supreme Court

¹ Article 27(2).

and twenty-nine other judges. Administrative authorities, being under the control of the Government, were in an even worse position than the judges to deal with complaints of torture.

'The Public Order of Europe'

The Greek Government also submitted that the applications against it were an abuse of the right of petition, since they had been made on political grounds.

The Commission held that a State application under Article 24 was not to be regarded as one intended to enforce the State's own rights, but rather as raising an alleged violation of the public order of Europe. While it was true that the decision of a Contracting Party to make an application might involve considerations of government policy, it was clear that the primary object of these proceedings was to ensure the observance of the legal engagements undertaken by the Parties to the Convention. The provision concerning an abuse of the right of petition was inapplicable to State applications: In any event, the alleged political element in the new allegations could not be considered such as to render the applications 'abusive'.

Convention can be Violated even if Contested Law is never Applied

The three Applicant Governments submitted that Constitutiona Act 'G' of July 11, 1967 violated Article 7 of the Convention and Article 1 of the First Protocol already referred to. The Constitutional Act in question provides that Greek citizens resident abroad temporarily or permanently, or having more than one citizenship, who act or have acted unpatriotically or who perform acts incompatible with Greek citizenship, or contrary to the interests of Greece, or to serve the interests of parties or organisations now dissolved or which are to be dissolved under Articles 1 and 2 of Obligatory Law No. 509/1947 can be deprived of Greek nationality by decision of the Minister of the Interior, against which no appeal nor inquiry for annulment shall be permitted. Such persons shall be liable to imprisonment for at least three months and to a fine of at least 20,000 drachmas.

The Greek Government, while denying the incompatibility of the Law with the Convention and Protocol, submitted that since it had never been applied the applications in question were inadmissible.

The Commission, however, held that, while it was true that under Article 25 only such individuals may seize the Commission as claimed to be 'victims' of a violation of the Convention, the condition of a 'victim' was not mentioned in Article 24, which related to State applications. In the case of State applications (as opposed to individual applications) it was enough to show that a given law was incompatible with the Convention and there need have been no 'victim'.

Editor's Note: The Sub-Commission, set up in April 1968 to investigate the facts, made its report to the Commission in October 1969. The Commission's Report, which sets out its opinion, was then finalised in November and transmitted to the Committee of Ministers of the Council of Europe under Article 31(2) of the Human Rights Convention. At this stage Article 32 comes into operation. This Article runs thus:

1. If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the Report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.
2. In the affirmative case the Committee of Ministers shall prescribe a period during which the High Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.
3. If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph 1 above what effect shall be given to its original decision and shall publish the Report.
4. The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

Since Greece is not one of the eleven (out of sixteen) States to have accepted the compulsory jurisdiction of the European Court of Human Rights, the Committee of Ministers will have to make a decision under Article 32, unless Greece herself takes the case to the Court or otherwise consents to the Court's hearing the case (Article 48).

The International Commission of Jurists has issued the following statements to the Press:

- The Rule of Law Abrogated in Greece—May 9, 1967.
- The Greek Situation—Letter to the Council of Europe—May 19, 1967.
- Current Events in Greece—June 21, 1967.
- UN Action on Greece, Haiti and Southern Africa—October 12, 1967.
- The Silencing of the Press in Greece—October 28, 1967.
- Greece: Trials and the Right to Counsel—November 17, 1967.
- Attack on the Greek Judiciary—June 7, 1968.
- An ICJ Observer in Greece—July 4, 1968.
- The New Constitution of the Greek Colonels—August 14, 1968.
- ICJ sends Observer to Salonika—November 5, 1968.
- Defenders of the Rule of Law in Greece—July 7, 1969.

The Commission has published the following articles:

- The Rule of Law Abrogated in Greece—*Bulletin* No. 30, June 1967.
- Free Thought in Greece: An Enforced Conformity—*Bulletin* No. 34, June 1968.
- Greece: Justice in Blinkers—*The Review* No. 1, March 1969.
- An Assessment of the Greek Situation following upon an Official Announcement that Certain Restrictions would be lifted—ICJ News, *The Review* No. 2, June 1969.

Basic Texts

Minimum Treatment of Prisoners

Traditional penal policies were generally framed in terms of two objectives: deterrence and the protection of society. Today however, the impact of the Universal Declaration of Human Rights has associated penology with a growing body of human rights law. In regard to common law offenders, less emphasis is given to the correctional aspect of imprisonment, rehabilitation having become an objective rather than a by-product of correctional treatment. As for political offenders, their imprisonment is now seen more in the context of the articles in the Universal Declaration relating to freedom of expression, opinion and association.

The Standard Minimum Rules for the Treatment of Prisoners are a reflection of this change in modern penological thinking. They are a statement of humanitarian principles which represent a minimum of humane conditions for the treatment of prisoners. They introduce the humanitarian spirit of the Universal Declaration of Human Rights into the correctional system and reflect world reaction against ineffective or cruel methods of treatment and inhuman prison conditions. They apply impartially to all prisoners, including political prisoners.

The Standard Minimum Rules were originally drawn up by the International Penal and Penitentiary Commission (IPPC) in 1933 and were endorsed by the Assembly of the League of Nations in 1934.¹ The Secretariat of the United Nations undertook the task of revising the IPPC draft, and the revised text was adopted in 1955 by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders.² In its resolution, the Congress requested the Secretary General of the UN to submit the Rules to the Economic and Social Council and expressed the hope that they would be approved by the Council and transmitted to governments. In 1957 the Economic and Social Council did approve the Rules and invited governments to give favourable consideration to their adoption and application.³ The Council also endorsed the Recom-

¹ Resolution of September 26, 1934, League of Nations, *Official Journal*, Special Supplement No. 123, VI, 4.

² Resolution of August 30, 1955.

³ Resolution 663 C (XXIV) of 31 July, 1957.

mendations on the Selection and Training of Personnel for Penal and Correctional Institutions and the Recommendations on Open Penal and Correctional Institutions adopted by the First Congress¹ and invited governments to take them into account as fully as possible in their administration of penal and correctional institutions.²

The Rules only lay down minimum requirements, but their importance and value for the protection of human rights cannot be ignored. Their full application should be given the highest priority in every country. This would involve appropriate national legislative and administrative measures based on the recognition of inherent human rights. Effective application also depends on the availability of legal sanctions against infringements. Primarily such sanctions must be available on the national level, but the availability of international supervision is also desirable.

Since 1957 the United Nations' call for the implementation of the Standard Minimum Rules has received sympathetic response, but inconclusive action. The International Commission of Jurists has taken an active interest in the task of implementation and has taken part in the work of the UN Consultative Group on the Prevention of Crime and the Treatment of Offenders. The Group has also studied the advisability of further revision of the Rules in the light of the experience gained in their implementation and the progress achieved in penology since their formulation. There have been several interesting suggestions in regard to revision: one suggestion has been the provision of improved treatment for political detainees as a separate category in the special part of the Rules; another question under consideration is whether the Rules should be extended to other correctional measures than imprisonment. The Fourth UN Congress on the Prevention of Crime and the Treatment of Offenders, which will meet in Kyoto (Japan) in August 1970, will examine these questions in detail in the light of the Consultative Group's recommendations. It is hoped that this Congress will mark a significant step forward in the promotion and especially in the application and implementation of the Rules.

The International Commission of Jurists is aware that, for all practical purposes, the application and implementation of the Rules will depend largely on the extent to which they are known. It has therefore decided to reproduce them in full, wishing to draw the attention of lawyers all over the world to their provisions. Lawyers have a special role to play in the promotion of recognised standards of treatment of detained persons; their full support should thus encourage the application of the Rules in every country.

¹ Resolution of September 1, 1955.

² The text of these recommendations is not included with the Rules reproduced below.

STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS

PRELIMINARY OBSERVATIONS

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

4. (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to 'security measures' or corrective measures ordered by the judge.

(2) Part II contains rules applicable only to the special categories dealt with in each section. Nevertheless, the rules under section A, applicable to prisoners under sentence, shall be equally applicable to categories of prisoners dealt with in sections B, C and D, provided they do not conflict with the rules governing those categories and are for their benefit.

5. (1) The rules do not seek to regulate the management of institutions set aside for young persons such as Borstal institutions or correctional schools, but in general part I would be equally applicable in such institutions.

(2) The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment.

PART I. RULES OF GENERAL APPLICATION

Basic principle

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults.

Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21. (1) Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitably trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.

23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, heating, lighting and ventilation of the institution;
- (d) The suitability and cleanliness of the prisoners' clothing and bedding;
- (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.

Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.

(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property;

in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.

42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45. (1) When prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

46. (1) The prison administration, shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of

tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their examples and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.

50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.

(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

PART II. RULES APPLICABLE TO SPECIAL CATEGORIES

A. PRISONERS UNDER SENTENCE

Guiding principles

56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.

60. (1) The régime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release régime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

61. The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connexion with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

62. The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

63. (1) The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.

(2) These institutions need not provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open institutions, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to rehabilitation for carefully selected prisoners.

(3) It is desirable that the number of prisoners in closed institutions should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such institutions should not exceed five hundred. In open institutions the population should be as small as possible.

(4) On the other hand, it is undesirable to maintain prisons which are so small that proper facilities cannot be provided.

64. The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.

Treatment

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

Classification and individualization

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

Privileges

70. Systems of privileges appropriate for the different classes of prisoners and the different methods of treatment shall be established at every institution, in order to encourage good conduct, develop a sense of responsibility and secure the interest and cooperation of the prisoners in their treatment.

Work

71. (1) Prison labour must not be of an afflictive nature.
- (2) All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.
- (3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
- (4) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.
- (5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
- (6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

72. (1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

(2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.

73. (1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.

(2) Where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel. Unless the work is for other departments of the government the full normal wages for such work shall be paid to the administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners.

74. (1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

(2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.

75. (1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.

(2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.

76. (1) There shall be a system of equitable remuneration of the work of prisoners.

(2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.

(3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.

Education and recreation

77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.

(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.

78. Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.

Social relations and after-care

79. Special attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.

80. From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.

81. (1) Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.

(2) The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.

(3) It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.

B. INSANE AND MENTALLY ABNORMAL PRISONERS

82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.

(2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care.

C. PRISONERS UNDER ARREST OR AWAITING TRIAL

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as 'untried prisoners' hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special régime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense

from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

89. An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

91. An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

D. CIVIL PRISONERS

94. In countries where the law permits imprisonment for debt or by order of a court under any other non-criminal process, persons so imprisoned shall not be subjected to any greater restriction or severity than is necessary to ensure safe custody and good order. Their treatment shall be not less favourable than that of untried prisoners, with the reservation, however, that they may possibly be required to work.

ICJ News

COMMISSION

A Meeting of the Executive Committee of the Commission was held on 11th and 12th October 1969 in Geneva. One of the principal matters discussed by the Committee was the holding of a full meeting of the Commission in 1970. It is hoped that this meeting will take place in May, in Talloires, near Geneva. The Executive Committee also recommended seven new Members for election to the Commission. Election will take place by postal ballot, and the names of those elected will be published as soon as the results are known.

SECRETARIAT

The Standard Minimum Rules for the Treatment of Prisoners (reproduced on pp. 48-59 above) were discussed on 15th September at a joint session of the Commission and Amnesty International, whose International Council was then in Geneva. The purpose of the meeting was to consider useful amendments to the Rules that could be proposed at the UN Congress on the Prevention of Crime and the Treatment of Offenders to be held in Japan next year. Participants at the meeting were Mr Seán MacBride, Secretary-General of the Commission, Mr Martin Ennals, Secretary-General of Amnesty International, members of Amnesty's International Council and members of the staffs of both Organisations.

On 27th September, Mrs A. J. Pouyat was the Commission's Observer at a 'round table' discussion on Children and the Administration of Justice, which was organised at Geneva by the International Catholic Child Bureau.

The twelfth Conference of Non-Governmental Organisations having consultative status with UNESCO was held at Paris from 20th-23rd October. It was attended by Miss Monique Desforges, who is the Commission's permanent representative at UNESCO and a member of *Libre Justice*, the French Section of the ICJ.

An Inter-American Conference of Experts on Human Rights was held at San José, Costa Rica, from 7th-22nd November under the auspices of the Organisation of American States. The purpose was the discussion and adoption of an Inter-American Convention on Human Rights. The Commission was represented by Mr Fernando Fournier, Member of the Commission, and by Mr Marino Porzio of the legal staff.

Mr MacBride attended a Conference held by the Women's International League for Peace and Freedom on 21st-23rd November. One of the Conference's main tasks was to study the report of the UN Secretary-General on chemical and bacteriological weapons and the effect of their possible use. Mr MacBride presented a paper to the Conference on the existing humanitarian conventions for the protection of human rights in armed conflicts.

Mr MacBride is to attend the opening of the International Institute of Human Rights at Strasbourg on 14th December. He will be present at the first meeting of its Council, of which he is a member. The Institute was founded by Mr René Cassin, who was awarded the Nobel Prize for Peace in 1968.

During International Education Year (1970) Mr Janos Toth, a member of the Commission's legal staff and a lecturer at the University of Geneva, is giving a course at the University entitled: 'The Law of Human Rights'.

The Director of the Henri Dunant Institute, Mr Pierre Boissier, and Mr Victor Segesvary, who is in charge of research at the Institute, visited the Commission's Secretariat. There was found to be a large field of interest common to the two Organisations, particularly in relation to the Law of War and to the development of Humanitarian Law. Members of the legal staff of the Commission then went to the Henri Dunant Institute to hear a lecture on the Red Cross, its working methods and the Geneva Conventions of 1949.

The International Commission of Jurists made an urgent appeal to the Spanish Government in favour of a young Basque nationalist, Mr Antonio Arizabalaga, who had been condemned to death on 27th October at a summary trial before a military court in Burgos. He had been accused of placing a bomb—which did not explode—in a police car. The Commission repeated its appeal in a press statement of 29th October. It was learnt later that the Spanish Government had decided to commute the sentence of death to one of 30 years' imprisonment.

The Commission sent an Observer to the trial in Athens, on 30th and 31st October, of ten youths on charges connected with bomb attacks. The Observer, Mr Bruno Keppler of the Geneva Bar, noted the strong pressures exercised on lawyers in Greece to prevent them from defending opponents of the regime.

The International Commission of Jurists sent Professor Sebastian Soler, a Member of the Commission from Argentina and a distinguished professor of law, to act as Observer at the trial of Mrs Niomar Bittencourt, Editor of the newspaper *Correio da Manhã*, which was held in Rio de Janeiro, Brazil, on 20th November. We have just learnt that Mrs Bittencourt has been acquitted.

NATIONAL SECTIONS

A meeting of the Presidents and Secretaries of the Commission's European National Sections was held, on the invitation of the German Section, at Bad Godesberg (Federal Republic of Germany) on 27th and 28th September. Eight National Sections were represented at the meeting, which was also attended by the Secretary-General of the Commission and members of the legal staff. At the meeting National Sections discussed their plans and considered ways of coordinating action with other Sections and with the International Secretariat. The subjects dealt with were: cooperation between two or more Sections, the holding of administrative meetings yearly and European Conferences every two years, the organising of seminars for young jurists on aspects of the Rule of Law and human rights, the recruitment of new members and subscriptions to *The Review*. The discussions were introduced by Dr R. Machacek and Dr H. Schrader, Secretaries General of the Austrian and German Sections respectively. A common programme was arrived at which included the holding of a seminar at Vienna in May 1970 and if possible a European seminar for young jurists at Istanbul, as well as a European Conference in November 1970, at Strasbourg. Both the Ministry of Justice of the Federal Republic of Germany and the Ministry of Foreign Affairs gave receptions for the meeting.

The first tripartite meeting between Sections, which was organised by the German Section with the Belgian and Netherlands Sections, was held on 1st and 2nd November at Trier, Germany. The subject was Preventive Detention. Three introductory speeches were made: by Mr Duplat, an assistant prosecutor from Brussels, Professor van Veen from the University of Groningen and Mr Kleinknecht, chief public prosecutor in Nuremberg. These were followed by extensive and very useful discussions. The Secretariat was represented by Mr Janos Toth, of the legal staff.

Sir John Foster, K.B.E., Q.C., a member of the British Parliament and an Alternate Member of the Commission's Executive Committee, visited Japan, Hong Kong, Singapore and Nepal in August this year. He established contact with the National Sections of the ICJ in those countries and discussed questions

of common interest with officers and members. He also visited Thailand, where there is no National Section, and had meetings with distinguished members of the local Bar.

Uttar Pradesh Commission of Jurists, a branch of the Indian Commission of Jurists, recently held a Seminar on 'The Law and Obscenity and Freedom of Expression in India'. The Seminar was inaugurated by Mr Justice A. N. Grover of the Supreme Court of India and was attended by lawyers, law teachers and distinguished members of the public from several parts of India.

The Lucknow Section of the Indian Commission of Jurists, having concluded a successful Seminar on 'Delay in Criminal Proceedings in India', organised a valuable series of seminars during August, September and October, on 'Re-appraisal of Democracy in India'.

The Mysore State Commission of Jurists organised a Symposium on 'Ghandiji and the Rule of Law' in October 1969 to celebrate the Ghandi centenary.

The Ceylon Section is organising a Seminar on 'Is the Legal Profession in Ceylon fulfilling its Role in our Changing Society?' to be held in January 1970.

The Japanese Section of the ICJ, the Association of Jurists for the Rule of Law, began this year to publish its new quarterly 'Law and Human Rights'. The first three issues have already appeared. The first Study Meeting of the Section was held on United Nations Day, October 24th, when a report by Mr Atsushi Nagashima on the prevention of crime and the treatment of offenders with special reference to popular participation was discussed.

The Hong Kong branch of JUSTICE must be congratulated on its excellent and comprehensive report on the 'Feasibility of Instituting the Office of Ombudsman in Hong Kong'. The Report has received much publicity in Hong Kong and abroad; it is hoped that the efforts of the Hong Kong Branch to persuade the Government to accept the recommendations in the Report will be rewarded.

The latest issue of the Bulletin of *Libre Justice*, the French Section, deals with censorship in the cinema. It refers to the reports and discussions of a successful colloquium organised by *Libre Justice*, under the chairmanship of Mr René Mayer, a Member of the Commission, which was attended by jurists, members of the cinematographic professions and representatives of the public administration.

Books of Interest

Africa

L'Organisation Judiciaire en Afrique Noire

Studies

Edited by l'Institut de Sociologie, Belgium, 1969, pp. 290

The African Revolution

by Russel Warren Howe

New African Library, Croydon, 1969

Criminal Law

Dogmatische Untersuchungen zur Entwicklung des materiellen Völkerstrafrechts seit Nürnberg

by Otto Triffterer

Published by Eberhard Albert Verlag, Freiburg im Breisgau, 1966,

pp. 244

La Protection pénale contre les Excès du Pouvoir et la Résistance légitime à l'Autorité

by Jacques Verhaegen

Establishment Emile Bruyland S.A., Brussels, 1969

Greece

La Filière

(Account of torture in Greece)

Combat Collection, published by le Seuil

Le Livre Noir de la Dictature en Grèce

Combat Collection, published by le Seuil

Report of the Visit of the Delegates from the International Committee of the Red Cross to Prisons in Greece, during November and December 1968

Published by the I.C.R.C., Geneva, 1968

Human Rights

International Group Protection, Aims & Methods in Human Rights

by J.-J. Lador-Lederer

Published by Sijthoff-Leyden, 1968

Liberté et Droits Fondamentaux au Canada

(Recapitulation of Developments during 1st January to 31 December 1968)

by Maître V. M. H. Rodriguez

Published by the Canadian Jewish Congress, Montreal, 1968 (No. 32), pp. 111

Violation des Droits de l'Homme en Ukraine et en U.R.S.S.

(Historical and Political Studies)

by Wolodymyr Kosyk

Published by l'Est Européen, Paris, 1969, pp. 160

International Law*Space Law*

by Gyula Gál

Oceana Publications, Inc.-Dobbs Ferry, N.Y. USA, 1969

The Law of Nations

by J. E. S. Fawcett

Allen Lane The Penguin Press, London 1968, pp. 195

North of Ireland*Burntollet*

by Bowes Egan & Vincent McCormack

L. R. S. Publication, London, 1969, pp. 64

Palestine*Palestine, the arabs and Israel*

(The Search for Justice)

by Henry Cattan

Published Longmans, Green and Co. Ltd., London, 1969, pp. 281

Socialism*Annuaire de l'Université de Sofia, Faculté de Droit*

(Volumes 1 & 2)

Sofia, 1968, pp. 322

L'économie collectiviste

by Slavomir Jiranek, pp. 61

Polish Family Law

(Law in Eastern Europe)

by Dominik Lasok

Published by Z. Szirmai, Sijthoff-Leyden, 1968, pp. 304

Soviet Citizenship Law

(Law in Eastern Europe)

by George Ginsburgs

Published by Z. Szirmai, Sijthoff-Leyden, 1968, pp. 304

The Civil Code and the Code of Civil Procedure of the RSFSR 1964

(Law in Eastern Europe)

Translated by A. K. R. Kiralfy

Published by Z. Szirmai, Sijthoff-Leyden, 1966, pp. 312

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