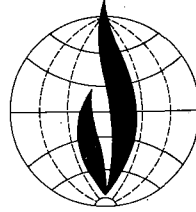


For the Rule of Law

THE REVIEW



INTERNATIONAL COMMISSION OF JURISTS

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Editor: Niall MacDermot

The International Commission of Jurists

For nearly 20 years the International Commission of Jurists has undertaken many useful projects and has made important contributions to the promotion of the Rule of Law and respect for Human Rights throughout the world.

The Commission is strictly non-political. The independence and impartiality which have characterised its work have won widespread respect.

The Commission's advice and assistance are sought by governments, organisations and individuals from every continent. We are anxious to continue, improve and expand our work. In order to do this, we need the financial as well as the moral support of jurists, and other readers, everywhere.

We accordingly invite you to become an individual *Contributor to the work of the International Commission of Jurists* by contributing *Sw.Fr. 100.00 per year*, or more to our funds. On becoming a Contributor you are entitled to receive free copies of *THE REVIEW*, and of any special reports we may issue.

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Editorial

An explanation is due to our readers for the delay of nearly a year in the publication of this issue of *The Review*.

As many will already know, the International Commission of Jurists faced a serious financial crisis a year ago which threatened its future existence.

For the last 18 years the Commission has been able to carry out its work with the generous assistance of foundations and subscribers, mainly in the United States. Last Spring this assistance was so substantially diminished that the Executive Committee was reluctantly compelled to suspend publication of the *Review* and to reduce the staff of the Secretariat in Geneva.

At the same time the Committee decided to appeal to the Ministers of Justice of the Council of Europe, who were meeting last May in The Hague, asking them to invite their governments to make contributions to the Commission by way of grant in order to enable it to continue its work in the international field for the promotion of the Rule of Law and the protection of Human Rights.

In response to this appeal the governments of Austria, Cyprus, Great Britain, France, Netherlands, Switzerland and Western Germany have already generously made contributions to the Commission, and some other European Governments still have the matter under consideration.

In addition, some non-European Governments, learning of the Commission's financial crisis, offered us contributions of their own. These are Canada and two Caribbean Governments, Guyana, and Jamaica. Encouraged by these generous gestures, the Commission are approaching a number of other non-European governments inviting their support.

It is a source of very great encouragement to the Commission that the value of its work should have been recognised in this way by governments from so many parts of the world and we wish to express our deep debt of gratitude to them for making it possible in this way for our work to continue. It goes without saying that these governmental contributions have been accepted on the explicit understanding that they in no way affect the complete independence and impartiality of the Commission. Indeed, the widespread support we are now receiving may itself be thought to be a safeguard of that independence.

The scale of the support we have so far received does not enable us as yet to resume publication of our *Review* on a quarterly basis, but we hope to be able to publish twice yearly until further notice.

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Political prisoners and trials

The interruption in our publication has not diminished the other activities of the Commission in the defence of Human Rights throughout the world. We continue to receive far more requests for assistance than our resources enable us to meet. It is a sorry reflexion upon our times that there are few parts of the world where people do not feel the need of an independent and impartial organisation like the International Commission of Jurists to help them to achieve justice at the hands of the governments under which they live.

Many of our readers will have read of the report we produced last July on the torture and treatment of political prisoners in Brazil, a report which was widely publicised in the press, radio and television throughout the world, and which is now under consideration by the Human Rights Commission of the Organisation of American States. A novel feature of the present regime in Brazil is the arrest, detention, torture and subsequent release of political prisoners without, apparently, any intention of bringing them to trial. This is government by intimidation, for which there appears to be no lawful remedy. It is hardly surprising in these circumstances that opponents of the regime resort to 'terrorist' measures.

Perhaps the most encouraging development of the year in the field of human rights has been the tremendous increase in public concern about political trials in different parts of the world, and the vehement and effective expression of the growing force of public opinion. This reached its height at the end of 1970 at the time of the Burgos and Leningrad Trials. The International Commission of Jurists is glad to have been able to play its part in helping to canalise and give expression to the tremendous upsurge of protest and condemnation at that time. Not only were the lives spared of the particular defendants in those trials, but notice has been served upon governments throughout the world that the public conscience is stirred by the persecution of people who are attempting to assert their fundamental human rights.

About the same time, an unprecedented development occurred when the International Commission of Jurists was invited by a government to send an observer to one of its own trials. This was the trial in the Cameroons of the rebel leader Ouandié and Bishop Ndogmo and other defendants. A distinguished Swiss lawyer, Maître Edmond Martin-Achard attended the trial. He had previously attended political trials in Greece on behalf of the Commission. We publish in this number an interesting article by Maître Martin-Achard containing his reflexions upon the nature of political trials and the role of observers at them. As far as we are aware this is the first article to have been published on this topic, although the practice of sending observers has now become well-established.

The Commission has sent no less than 28 observers to political trials in all parts of the world during the last eleven years.

The appointment of political observers may at times help to deter a government from mounting a political trial. This would seem to have been the case in relation to the threatened trial last year in Czechoslovakia of Pachmann, the famous chess player, and six others who were arrested and detained for a long period. The Commission's appointment of Ambassador Roy Ganz, a former Swiss judge and ambassador to Moscow, as observer at the prospective trial received world wide publicity. This seems to have assisted those forces within the Czech government who were seeking to avoid political trials. All the defendants have now been released on bail and it seems unlikely that any trial will take place.

Capital punishment

A common feature of the awakening public conscience in relation to political trials is a growing revulsion against the use of capital punishment in such cases. Bearing in mind that most political violence arises out of the repression of basic human rights, such as the freedom of speech, freedom of association or freedom of movement, the imposition of capital punishment only serves to escalate still further this cycle of repression and violence. For this reason the International Commission of Jurists welcomes the initiative of the Italian Government in proposing in the Economic and Social Council of the United Nations a universal agreement for the abolition of capital punishment.

Racism and Racial Discrimination

The International Commission of Jurists welcomes the decision of the General Assembly of the United Nations to designate 1971 as the International Year for Action to Combat Racism and Racial Discrimination.

Combating racism and racial discrimination, particularly in its most pernicious and ideological form in the doctrine of Apartheid, has been in the forefront of the Commission's work in defence of human rights. In this number we mark the occasion by reproducing the text of the International Convention on the Elimination of All Forms of Racial Discrimination. This Convention entered into force on 13 March 1969. As of December 1, 1970, 73 States had signed the Convention and 44 States had either ratified or acceded to it.

Mr. Sean MacBride

Mr Sean MacBride S.C. resigned as Secretary-General and editor of the Review at the end of 1970. The International Commission of Jurists wishes to place on record its deep appreciation of the

tireless devotion and inspiring leadership given by Mr MacBride during his seven years as Secretary-General, and the great contribution he has made in increasing public understanding and recognition of the work of the Commission. If the Commission now enjoys greater prestige and influence than at any previous time, this is in no small measure due to the efforts of Mr MacBride. Evidence of his personal standing is demonstrated by the invitation he received from the Security Council to give evidence before their sub-Committee on Namibia.

Solzhenitsyn's Definition of Justice

“Justice has been the common patrimony of humanity throughout the ages... Obviously it is a concept which is inherent in man, since it cannot be traced to any other source. Justice exists even if there are only a few individuals who recognise it as such...

“There is nothing relative about justice, as there is nothing relative about conscience. Indeed, justice is conscience, not a personal conscience but the conscience of the whole of humanity. Those who clearly recognise the voice of their own conscience usually recognise also the voice of justice. I consider that in all questions, social or historical, justice will always suggest a way to act (or judge) which will not conflict with our conscience... You will never err if you act in any social situation in accordance with justice (the old way of saying it in Russia is : to live by truth).” *

* (Quoted in “Solzhenitsyn : A Documentary Record” edited by Leopold Labedz, Allen Lane, Penguin Press, £1.50.)

Human Rights in the World

Brazil

When the new constitution was promulgated in Brazil, on 30 October 1969, jurists throughout the world were encouraged to hope for a moment that General Garrastazu Medici, in acceding to the Presidency, was going to adopt a policy tending to restore individual liberties.

But on 27 February 1970, in his first press conference, the Head of State dismissed all idea of a return to democratic rule. The private television programmes in Rio de Janeiro broadcast his warning, which finally dispelled certain illusions. 'Institutional Act No. 5 of 13 December 1968 was proclaimed too late, and it is now too soon to revoke it'¹. So there was no question of putting an end to the state of emergency. As far as the President was concerned, the institutional act would be revoked only when the situation itself would have made it unnecessary.

Because world public opinion was deeply stirred by the torture inflicted on political prisoners, the Government is now trying to restore the public image of Brazil abroad. Among other measures, it sent Don Geraldo Procuca Sigaud, Archbishop of Diamantina, to enlighten opinion in Europe. The Archbishop stated: 'All in all, the police in Brazil is like that in other countries; in those countries, I don't think it's with sweets that terrorists are persuaded to confess'. The Minister of Justice, Alfredo Bussaíd, judged it necessary to go himself to Spain, Italy and Germany to refute the allegations of torture made against the official and 'unofficial' forces of repression at present given free rein in Brazil.

A Brazilian Minister admits the existence of torture

The Brazilian Government has now admitted that torture is used, since the conservative Rio de Janeiro paper 'O Globo' published an interview with the Minister of Education, Jarbas Passarinho, in December 1970 during which he said, 'It would

¹ See 'Le Monde', 1 March 1970.

not be true to say that torture does not exist in Brazil, but to suggest that torture is used as a system of government is disgraceful' ¹.

The legislative elections are held in an atmosphere of repression and intimidation

The 1970 elections promised by the Government were held in an atmosphere of extraordinary repression. Certain political parties, like the Alliance for a National Revival, did not hide their consternation at the vast wave of arrests which swept the country some ten days before the elections. More than five thousand persons ² were arrested for personal identification. It appears that President Medici, disturbed by the extent of the repression, ordered the security services to put an end to this wave of arrests ³. Public opinion in Brazil had been deeply affected by the arrest of three prominent Rio de Janeiro lawyers: August o Sussekind de Moraes Rêgo, Heleno Claudio Fragoso and George Tavares.

During the night of Saturday to Sunday 1 November the distinguished lawyer Fragoso, a Professor at the Faculty of Law and a widely known Brazilian criminologist, was arrested at one o'clock in the morning by agents of the federal police. He was taken away in a Ford car, his head being covered with a black hood tied with a cord which made it difficult for him to breathe and prevented him from seeing anything. He says, 'The car travelled for about 30 or 40 minutes. Then I was taken out of the car like a blind man. The hood was removed and I was stripped of everything I had brought with me (medicines, glasses). There was neither furniture nor running water in the cell. They put out the light. There was a cement floor, and the walls were extremely damp. At about seven o'clock in the morning I was put into chains... The second night I spent in a sitting position, in chains, in an intensely cold atmosphere. The third night they brought me a bed, which I had demanded, but without any blankets or pillow. First thing in the morning, the bed was taken away and my chains were put on again.' He was set free during the fourth night, in circumstances as strange as those which had surrounded his abduction. With a hood over his head, he was put into a car which travelled for three quarters of an hour, including ten minutes through very heavy town traffic. After being taken from the car, his hood was removed and he was forced to walk along the top of a wall, in total darkness, and finally abandoned

¹ The second part of this statement is rejected. Torture today in Brazil is no longer a mere accessory to a judicial interrogation. It has become a political weapon. It is a means of intimidation.

² See 'Veja', 11 November 1970; 250 at Sao Paulo, more than 20 in Rio Grande do Sol, about 10 in Espirito Santo, more than 5,000 in Rio de Janeiro.

³ See 'O Estado', the Sao Paulo conservative daily, for 5 November 1970.

with an order not to look round if he didn't want to be pushed over. The two other lawyers suffered the same treatment. They were not subjected to an interrogation. These three eminent defence lawyers have submitted their case to the Lawyers' Association of Brazil, the Brazilian Government and the International Commission of Jurists. Their case has been filed for examination by the famous "Council for the Defence of Human Rights" ¹.

It was in this atmosphere, while journalists, publishers, artists and former members of parliament were being arrested, that the legislative elections were prepared. Since voting is compulsory, the only way of expressing opposition to the military government is by a blank or an invalid voting paper. In Rio de Janeiro the ballot boxes were found to contain 387,000 blank voting papers and 339,000 that were invalid; in other words, half the total number of voters.

Unfortunately, the Commission is constantly receiving proof of the use of torture:

From the 1st to the 28th of October 1970, there appeared before the tribunal of the second military region in Sao Paulo ², accused of terrorism and subversion, the seven Dominican friars used as a bait in the trap that was set to catch the revolutionary leader Marighela, who was killed on 4 November 1969. As a result of the unbearable torture to which they were subjected, two of the Dominicans tried to commit suicide. The description of these tortures by the Dominicans were horrifying; when the defence lawyer asked, however, that the court should take legal cognizance of the facts, the judge replied:

"Torture is such a horrible thing that the details cannot be recorded in official documents".

The revolutionary Aldo Sa Da Britta de Souza Neto, arrested during the negotiations between the Medici Government and the members of the Alliance for National Liberation which was responsible for the abduction of the Swiss Ambassador, G. E. Bucher, having been subjected to uninterrupted interrogation, killed himself by jumping from a window.

¹ As early as 1956, Bilac-Pinto had proposed to the Brazilian parliament the creation of this council, inspired by the United States Committee for Civil Liberties. But the text was not adopted until March 1964 (Law No. 4,319, 16 March 1964) on the eve of the *coup d'état*. It then took a further four years before the decree introducing measures for the enforcement of the law was published (Decree No. 63,681, 22 November 1968). According to its Standing Orders, the Council should meet twice a month; in actual fact, the meetings are so infrequent that the first took place thirteen months later, in December 1969, and the second in August 1970. The Minister of Justice is the chairman of the Council.

² See, in 'Le Figaro' for 20 November 1970, the article by Abbé René Laurentin.

International judicial action against torture

A report published by the Commission on 22 July 1970 concerning police repression, the torture inflicted on those who opposed the Government and on political prisoners provoked an immediate reaction on the part of the Brazilian Government, which denied the existence of political prisoners and the use of torture. The Commission had also submitted the findings of its report to the Human Rights Commission of the Organisation of American States. As a result, at its 24th session lasting from the 13th to the 22nd of October, the Human Rights Commission decided to appoint a 'rapporteur' to investigate the situation in Brazil with regard to the respect of Human Rights. It also :

'requested the Government of Brazil, in accordance with article 11, Part C, of its constitution and with article 50 of its standing orders, to allow the 'rapporteur' and the Executive Secretary of the Inter-American Committee for Human Rights to visit Brazil in order to obtain the necessary information and fulfil their assignment'.

At the end of 1970 the Government of Brazil formally refused permission to carry out the investigation. This being so, the judicial procedure to be adopted by the Commission of the OAS is the following: The Commission invites the Brazilian Government to answer the accusations made against it concerning torture and improper treatment of prisoners and those who oppose the Government. The Government has six months in which to provide the information asked for; at the expiry of that period, the Human Rights Commission can submit a report to the General Assembly of the OAS where it may be debated.

The Cost of Legal Aid in Czechoslovakia

Since the Russian invasion of Czechoslovakia in 1968, approximately 70,000 Czechoslovak citizens have either left their country or decided not to return there.

In September 1970, thousands of Czechoslovak refugees residing in Western Europe and in the United States began to receive the following letter from various Legal Advice Centres in Czechoslovakia :

Dear . . .

I wish to inform you that based on the decision of an investigation made on (date), criminal proceedings have been initiated against you,

based on paragraph 109/2 of the Criminal Law, because according to the aforementioned decision there is a reasonably founded conclusion that you have been illegally abroad since . . . with the intention of taking up permanent residence there. According to the law, defence counsel in this case is obligatory. Since you have not chosen a defence counsel, I have been nominated to represent you, for which reason I am sending you the above information. At the same time, I wish to inform you that according to the provisions of the criminal law cited, you can be tried in absentia, and may be sentenced to prison for a term of 6 months to 5 years, to corrective measures and to confiscation of property.

It is in your own interest to let me know whether any circumstances exist which as your lawyer I can use in your defence in these proceedings. Especially let me know whether you submitted an appeal asking for permission to prolong your stay abroad or whether such appeal is under consideration by the authorities.

Finally, I wish to inform you that the costs of the proceedings and of the defence have to be paid by you. As far as the cost of the defence is concerned, it is my duty to ask you to pay within 15 days an appropriate down payment, i.e. Czechoslovak Crowns 700 (£35, old official rate). According to our currency regulations, this down payment must be paid in the currency of the state where you are now domiciled, to the value of the official exchange rate,¹ and credited to the account of the Regional Lawyers' Union at . . . with . . . bank. Should you fail to transfer the required sum within the period stipulated, the Legal Advisory Centre is entitled to obtain payment from your nearest relatives in the Czechoslovak Socialist Republic.

I await your reply and remain with greetings, Yours, etc.

As a result of this letter, the International Commission of Jurists wrote the following letter to the Minister of Justice on the 18 January 1971, expressing surprise at the peculiar behaviour of members of the Czechoslovak Bar :

Dear Minister,

A letter has been shown to us purporting to be sent by a firm of Czechoslovak lawyers to a number of Czechoslovak refugees residing in the United Kingdom.

The letter informs the addressees that criminal proceedings have been initiated against them under S 109/2 of the Criminal Law and that the costs of the proceedings would have to be paid by the addressee. The letter ends with the following words : "Should you fail to transfer the required sum within the period stipulated, the legal Advisory Centre is entitled to obtain payment from your nearest relatives in the Czechoslovak Socialist Republic".

We find it difficult to conceive that such unethical conduct as this can be sanctioned by law or have the approval of your Ministry. It

¹ External rate: 10 Czech. Crowns for 1 Swiss Franc.
Official rate: 1.65 Czech. Crowns for 1 Swiss Franc.

cannot be right that a person should be under an obligation to pay for a defence which he has not requested or approved, and still less that payment should be recoverable from a third party who has no connection with the matter other than being a relative of the accused. Moreover, it appears somewhat unusual for a lawyer, writing a letter to a client that he has been called upon to defend, to threaten his own client in the same letter. As no legal authority is quoted to cover this threat of obtaining money from a near relative it does appear to us that this apparent lack of professional conduct should be brought to your notice.

We should be grateful for your comments and advice.

No reply has been received to this letter.

However, on the 16th February 1971, the Communist Party leader, Gustav Husak, a former lawyer himself, with a substantial practice, ordered the lawyers of Czechoslovakia not to write any more letters demanding legal fees, and in doing so referred to the widespread protests made in the world press against the letters from the Czechoslovak lawyers.

'I did not know anything about it', he is reported to have said¹, 'and Comrade Strougal (the Prime Minister) did not, so I asked what is going on that has brought nearly all Western Europe to the boil?' Mr. Husak said anyone who fled abroad had committed a felony and was given a lawyer, 'and the lawyers in their offices said to each other, 'Let us let (the defendants) know and make them pay for it'.

'In my opinion, it was not very reasonable because if someone runs to the West, one would not think he would pay for legal representation', Mr. Husak said.

'We put our heads together and finally we advised (the lawyers) "Comrades, don't do it, there's no sense in it anyway. Because of your foolhardy action they (in the West) are slandering the whole regime".'

Article 109 of the Penal Code (Law No. 140 of 29 November 1961 as amended by the law No. 56 of 1965) provides as follows:

- (1) Any person who has left the jurisdiction of the Republic without permission is liable to imprisonment of 6 months to 5 years and/or to corrective measures and/or to the confiscation of his property.
- (2) Any Czechoslovak citizen who has remained abroad without permission is subject to the same penalties.

It is obvious that this law is contrary to Article 13 of the Universal Declaration of Human Rights which provides that 'everyone has the right to leave any country, including his own'.

¹ International Herald Tribune, 17.2.71.

In the light of Mr. Husak's statement, it is surprising that the Czechoslovak Bar Association defended the action of the defence lawyers in the Legal Advice Centre when protests were first raised against their letter. They would be well advised to remember the terms of the article written in 1961 by Mr. O. Bocek, President of the Czechoslovak Bar Association, on the Duties and the Organisation of the Czechoslovak Bar: — 'The Bar is a group of people who provide judicial assistance ... the fundamental basis of the relationship between the lawyer and the citizen is confidence'.

The International Commission of Jurists welcomes Mr. Husak's intervention and hopes that more can be done to restore confidence between lawyers in Czechoslovakia and their clients. The whole incident is an interesting example of the force of international public opinion.

Greece

In 1969 the International Labour Organisation appointed a Commission to examine the complaints concerning the observance by Greece of Convention No. 87, of 1948, on freedom of association and protection of the right to organize, and Convention No. 98, of 1949, on the right to organize and collective bargaining. The complaints had been filed at the end of June 1968 by the workers' delegations from Federal Germany, Canada, Denmark, Norway and Czechoslovakia.

The membership of the Commission, Lord Devlin, Privy Counsellor, for the United Kingdom, Jacques Ducoux, Councillor of State, for France and M. K. Vellodi, former ambassador, for India, was such as to ensure that the complaints would be investigated with speed and justice.

The commission examined the allegations contained in the complaints and also the Government's replies. The complaints may be summarised under the following headings: the dissolution of trade unions and the confiscation of their assets; the detention and imprisonment of trade unionists (it was alleged that 1,500 trade union members had been arrested and detained at the time of the *coup d'état*); the arrest and interrogation of trade unionists; the dismissal of trade union officers by the authorities; abolition of the right to strike; and the famous 'declarations of loyalty' required from public servants.

The general reply of the Government was that those affected by these measures were 'communists or people of extremely depraved character'.

The Commission held four sessions in Geneva during 1969 and 1970, devoted to the hearing of evidence and the preparation of its report. It had at its disposal written information and oral testimony. On 8 April 1970 the representative of the Greek Government having opposed the hearing of one witness, the Commission decided to override his objection; the Greek Government representative then stated that his Government was withdrawing its presentation of its witnesses and terminating its co-operation with the Commission. In view of this decision, the Commission decided that the question of a possible visit to Greece, which had been originally contemplated, would not be pursued further.

The Commission was nevertheless able to formulate its conclusions at a meeting held in October 1970.

With regard to the dissolution of trade unions and the confiscation of their assets, the Commission established that about 250 workers' organisations were dissolved by the administrative authorities after the *coup d'état*, in violation of article 4 of Convention No. 87 which provides that 'workers' and employers' organisations shall not be liable to be dissolved by administrative authority'. Concerning the arrest, detention and interrogation of trade union officers, the Commission had proof that 122 trade union officers were in detention for more than three months. Furthermore, the Commission noted that, in certain cases, imprisonment or detention had lasted more than three years without the initiation of court proceedings. Evidence was submitted to the Commission concerning the dismissal of trade union officers and their replacement by the Greek authorities. On these points, the Commission concluded that the use of such measures to remove trade union officers constituted an infringement of article 3 of Convention No. 87.

Briefly, the Commission concluded that a certain number of measures taken by the Government to consolidate its position had had the effect of infringing upon freedom of association, and found that a number of the provisions of Legislative Decrees Nos. 185 and 186 of 1969 were contrary both to the spirit and to the letter of Conventions Nos. 87 and 88.

Finally the Commission, in accordance with article 28 of the Constitution of the ILO, recommended (1) that the provisions of articles 9¹ and 10 of Legislative Decree No. 185, concerning the requirements for the holding of trade union office and for the remuneration of trade union officers, be repealed, and (2) that the Greek Government provide detailed information concerning any judicial decision relating to the power conferred on the courts of Greece by section 6 of Legislative Decree No. 185, to dissolve any trade union whose objectives and activities are aimed against 'the political or social regime'.

¹ Except for paragraph 8.

The Commission thought it probable that the grave breaches of the Conventions during the period from the *coup d'état* to the end of 1968 had left a sense of constraint which inhibited the full exercise of trade union rights and liberties. This sense of constraint would continue to exist until the effect of the emergency measures has been effaced and until all trade unionists arrested since 1967, and since then kept in detention without anything being known of their fate, are either released or brought to public trial.

On 14 January 1971 the Greek Government, reversing its earlier decision to break off its collaboration with the Commission, submitted a communication to the Director General of the ILO in accordance with Article 29, paragraph 2, of the ILO Constitution, by virtue of which any government concerned must within three months inform the Director General of the ILO whether or not it accepts the recommendations contained in the Commission's report and, if not, whether it proposes to refer the complaints to the International Court of Justice.

In this communication, the Greek Minister of Labour stated that the Greek Government had decided not to refer the complaints to the International Court and to accept the general recommendations of the Commission of Enquiry.

Accordingly, the Minister of Labour, Mr. Manopoulos, indicated that action had been initiated by the Greek Government for the repeal of Legislative Decree No. 185/1969 and that the Government agreed to provide the ILO with information concerning the application of Section 6 of Legislative Decree No. 185/1969. In other words, any judicial decisions taken by the Greek courts by virtue of the powers conferred on them by that Decree to dissolve certain trade unions whose aims were directed against "the political and social system", would be reviewed by the Governing Body of the ILO.

This procedure is provided for by Article 22 of the ILO Constitution and is quite unusual in international public law. It enables the ILO to receive annual reports on the measures taken by Member States to give effect to the provisions of conventions to which they are a party.

Morocco

On 2 December 1970, the attention of the International Commission of Jurists was drawn to the disappearance, on Moroccan territory, of Maître El Yazghi Mohamed, editor of the weekly journal 'Libération', member of the Central Committee of the Union of

the People's Forces of Morocco (U.F.P.M.), former Member for Fez of the National Assembly and former student of the National School of Administration (E.N.A.).

Maitre El Yazghi had been abducted on 16 November 1970¹ in circumstances of which little or nothing is known. He had left his home by car to attend a night session of the House of Representatives, and had not been seen since². Steps taken to obtain information from the office of the public prosecutor, from the National Security services and the Military Tribunal had produced no results. On 1 December 1970³, Maitre Abderrahim Bouabid, a prominent political personality and leader of Maitre El Yazghi's party, lodged a complaint with the judicial authorities of Morocco for abduction and arbitrary confinement by a person or persons unknown.

On 14 December 1970, the Commission submitted to the Moroccan government a request for information concerning this case.

The official reaction to the complaints of the families and the steps taken by international legal bodies was a 'commentary' by the Moroccan Radio and Television services, broadcast on 14 January 1971⁴, amounting to a statement that the Marrakech Court would shortly have to deal with the case of certain individuals accused of undermining the security of the State. The official commentary, judging the accused before they had appeared before a court, was worded as follows :

The acts concerning which a judicial enquiry has been ordered have been fomented by individuals who are not of Moroccan nationality and who, jealous of the stability and continuity of our regime, are attempting to involve us in an adventure into which they themselves have been led by their own incompetence or stupidity. As soon as they received the first indications of this plot, the directors of our security services reacted within the limits prescribed by law, but rapidly and effectively. Already it can be stated that reprehensible acts have been committed, that illegal methods have been used and that confessions, corroborated by indisputable material proof, have been made which justify a judicial enquiry.

However, 'L'Opinion', the daily paper published by the political party 'Istiqlal', stated on 9 January 1971 that the investigating military magistrate in Rabat had made a finding that he had no jurisdiction in the case of the persons arrested on a charge of endangering the internal and external security of the State. Among the 180

¹ See 'Le Monde', 19 November 1970, and 'Le Nouvel Observateur' 7-13 December 1970.

² See 'Le Monde', 22 November 1970.

³ See 'Le Monde', 2 December 1970.

⁴ See 'Le Petit Marocain', 15 January 1971.

persons arrested, he named Maître El Yazghi who, he said, had been presented before the examining military magistrate by the police on 25 December. As the lawyer had disappeared on 16 November, this means that he had been in the hands of the police for 39 days before appearing before a judge. This is what the official commentary refers to as reacting 'within the limits prescribed by law, but rapidly and effectively'. As will be seen below, other lawyers were held in this way for several months.

The Moroccan lawyers held as prisoners in this case now number six. As a result of the ruling of the investigating military magistrate that he had no jurisdiction on the grounds that the external security of the State was not involved, all the accused were transferred to the civil prison in Marrakech to be judged by the civilian investigating magistrate attached to the regional court in Marrakech.

On January 9, 1971, the Bar Association of Morocco, after a meeting held in the offices of the Casablanca Bar Council, made a courageous protest. The International Commission of Jurists fully approves its terms and is pleased to reproduce it below:

'The Association, having considered the present situation with regard to collective and individual liberties and the right of defence, more particularly after the arbitrary arrest of numerous persons including our colleagues Maitres Taoufik Idrissi, Ahmed Soulaj, Abdallah Boumehti, Mohamed Yazghi, Abdelfettah Bouabid, and the circumstances relating to the arrest and trial of our colleague Berrada, considers that it has a duty to state the following:

1. The way in which the members of the Bar referred to above were first arrested amounts to an abduction, since certain of them disappeared for a long period without either their families or the president of their Bar Council knowing what had happened to them. Indeed, all the approaches made by the Bar Councils and the Bar Association to the competent authorities provided no information as to the fate of the men who had disappeared. And, more important still, the authorities stated, in reply to verbal and written requests for information, that they had not at any time given orders for the arrest of certain of our colleagues.

It was only several months after their disappearance that we had the first news of our colleagues when they were brought, with other citizens, before the investigating magistrate of the military court.

2. The period during which our colleagues were held in confinement, before their case was referred to the military court, exceeded by several months that allowed by the law.
3. It is also clear that these lawyers were held on premises which are not known and not used for regular legal detention.
4. Our colleagues complain of extortions and of inhuman treatment.
5. After an investigation lasting several months by the investigating magistrate of the military court, and his decision that that court was not

competent to judge the case, the authorities decided to transfer the case to the Marrakech regional court.

This decision is likely to render difficult the task of the defence since the great majority of the lawyers briefed, numbering almost two hundred are members of the Bars of Rabat and Casablanca, which will impair considerably the position of the accused, who are legally entitled to an effective and permanent defence.

In view of these facts, all the Bar Councils of Morocco renew their vehement protests against the violation of the law constituted by the methods used at the time of arrest of the lawyers named above, and their denunciation of all the arbitrary measures directly affecting the rights of the defendant and the liberty of the citizen'. Casablanca, 9 January 1971¹.

¹ 'L'Opinion', 14 January 1971.

EXPANSION OF THE RIGHT TO A DEFENSE ATTORNEY UNDER SOVIET LAW

by

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An advance in the long process of expanding the right to a defense attorney under Soviet law was made by decree of the Presidium of the U.S.S.R. Supreme Soviet on 31 August 1970¹ and ratified by law of the plenary session of the Supreme Soviet on 10 December 1970.² The scope of the right has been in debate since the founding of the Russian Republic³, with acceleration after promulgation of the U.S.S.R.'s second federal constitution in 1936, and again after the end of the second world war. The 1970 law is a milestone in the expansion of the right.

Soviet constitutional law first lifted the matter above the level of the various procedural codes of the republics of the U.S.S.R. when Article III was incorporated in the 1936 Basic Law. Although worded to declare that 'the accused is guaranteed the right to defense,'⁴ the constitutional provision provided no specificity as to when the right could be exercised. The Russian Republic's code of criminal procedure of 1923 had provided for counsel only after the court received the case from the preliminary investigator.⁵ The preliminary investigation was, therefore, outside the code's

¹ *Vedomosti Verkhovnogo Soveta SSSR*, No. 36, item 362 (1970).

² *Ibid.*, No. 50, item 568 (1970).

³ The history of the various forms and functions of attorneys is set forth in J.N. Hazard, *Settling Disputes in Soviet Society* (New York: Columbia University Press, 1960).

⁴ The constitution of 1936 is printed separately by Progress Publishers, Moscow in several languages. It may also be read in comparison with earlier Soviet constitutions and with those of the other Marxian socialist states in J.F. Triska, *Constitutions of the Communist Party States* (Stanford, California: Hoover Institution, 1968).

⁵ Code of Criminal Procedure of the RSFSR, 15 February 1923. *Sobranie Uzakonenii RSFSR*, No. 7, item 106 (1923).

⁶ Art. 252.

provision, and commentaries so stated.¹ No immediate amendment of the code was promulgated after adoption of the 1936 constitution, and the matter was placed in committee charged with general revision of the code to meet the requirement that a set of federal codes be enacted to replace those previously in force in the various republics.

A clue as to the thinking of the time is provided by a contemporary treatise published in its fourth edition in 1938 by the most noted specialist in the field. He wrote, 'The question of permitting a defense attorney to participate in the preliminary investigation is now in the plan for reform of soviet criminal procedure. The need for an affirmative answer to the question arises from Article III of the U.S.S.R. Constitution, guaranteeing the accused in court the right to defense. Although this article speaks specifically of defense in court, this phrase must not be interpreted narrowly: it has in view not the court in the pure meaning of the word, i.e. the court sitting, but a court as a judicial process, as the administration of justice; thus, within the meaning of Article III of the Constitution, it extends to all stages of the proceedings and not alone to the stage of the court sitting.'²

The second world war engulfed the U.S.S.R. in 1941 and caused suspension of the codification process, but immediately after its end lawyers began again to raise the question. In 1947 a prosecutor wrote an article urging that a defense attorney be permitted to participate in the preliminary investigation, because he thought it a critical stage in the assembling of evidence in which errors of a hurried prosecutor could be discovered prior to trial only by a defense attorney.³ He was answered by a critic who feared that admission of a defense attorney to the preliminary investigation would negate the value of secrecy because an astute defense attorney might use his position to discover trends in the investigation so as to conceal evidence.⁴ Other authors proposed a middle ground under which a defense attorney would be excluded while evidence was being

¹ An annotated edition of the code used prior to promulgation of the 1936 constitution read: 'A defense attorney of the person before the court has the right to familiarize himself with the file only after the file has been received by the court, since only after that moment, according to Articles 239 and 252, may a person having a right to be a defense attorney be admitted to the case as a defense attorney.' D. Karnitskii and M. Strogovich, *Ugolovnoprotsessual'nyi kodeks RSFSR. Prakticheskoe posobie dlia rabotnikov iustitsii i iuridicheskikh kursov / The criminal-procedural code of the RSFSR. A practical handbook for legal personnel and for law courses /* (Moscow: Gosudarstvennoe Izdatel'stvo Sovetskoe Zakonodatel'stvo, 1934) p. 80.

² Prof. M.S. Strogovich, *Ugolovnyi Protsess. Kratkiy Uchebnik / Criminal Procedure. A Short Textbook /* (Moscow: Iuridicheskoe Izdatel'stvo N.K. Iu. Soiuza SSR, 1938) p. 152. The same paragraph without change of a word re-appeared in the edition of 1940 at p. 199.

³ Proposal of Comrade Bredikhin, *Sotsialisticheskaia Zakonnost'*, No. 1 (1947) p. 22.

⁴ Proposal of Comrade Libman, *Ibid.*, No. 3 (1947) p. 17.

gathered but permitted to enter the case as soon as the indictment had been framed. The compromise was proposed as a means of protecting secrecy while introducing an attorney to rectify error before trial.¹

Completion of a new federal code proved impossible during Stalin's declining years and for some years thereafter. Finally, in 1957, four years after his death, the constitution of 1936 was amended to remove from the federal authority the duty of enacting federal codes of law. This duty was returned to the republics, where it had been under the first federal constitution of 1923. The federal government was restricted to the enactment of 'fundamentals' to which the republics would adhere in drafting their more detailed codes. The draftsmen were instructed to begin again to prepare such 'fundamentals'.

The debate on the role of the defense attorney resumed along the same lines as had been evident before the war. As summarized by Professor M.S. Strogovich in a much expanded treatise on criminal procedure, it was opened by a plea in the U.S.S.R. Supreme Soviet in February 1957 by deputy A.M. Rumiantsev for participation of a defense attorney in criminal cases during the preliminary investigation. Almost simultaneously a conference organized to discuss possible changes in the principles of criminal procedure brought forth two views. M.L. Shifman is said to have argued for retention of the existing system excluding the attorney from the preliminary investigation, while others argued for his appearance from the moment the suspect became the accused.²

Articles on the subject began to appear in the law reviews. Significantly, as time was to prove, one was by G. Anashkin, who has since become chairman of the criminal division of the U.S.S.R. Supreme Court. He sided with those who wished to expand the right to defense to include the preliminary investigation as soon as the investigator decided that a prima facie case existed which should be investigated fully.³ Strogovich characterized Shifman's position as 'abstemious and careful,' and Anashkin's as more 'affirmative'. He threw his weight behind Anashkin, saying: 'From our point of view a defense attorney must be permitted to participate in the preliminary investigation from the moment that the criminal charge is made under Article 128 of the Code of Criminal Procedure of the R.S.F.S.R. If the investigation is correctly organized, there is no basis to fear that the defense attorney will impede the investi-

¹ I.D. Perlov, 'K proektu ugolovno-protsessualnogo kodeksa Soiuzs SSR,' Sovetskoe Gosudarstvo i Pravo, No. 9 (1947) p. 44.

² M.S. Strogovich, Kurs Sovetskogo Ugolovnogo Protsessa / Course of Soviet Criminal Procedure / (Moscow: Izdatel'stvo Akademii Nauk SSSR, 1958) p. 347.

³ G. Anashkin, 'Nekotorye voprosy kodifikatsii ugolovnoprotsessual'nogo zakonodatel'stva RSFSR,' Sovetskaiia Iustitsiia, No. 2 (1957) p. 35.

gation: if the indictment is completely based on the evidence, the defense attorney will be unable to shake it; if he is able to shake it, that means that it is not sufficiently well founded, and this will serve to the advantage and not to the detriment of justice and a successful struggle with crime.'¹

The draftsmen of the fundamentals under the weight of the argument, and probably stimulated by Nikita Krushchev's campaign to overcome the relics of Stalin in the legal system, took the step advocated by Anashkin and Strogovich, although they did not go all the way. The draft which they presented for public discussion in June 1958² provided for an attorney during the preliminary investigation but not at the outset. The attorney was to appear only at the moment when the investigator had become convinced of guilt and had presented the indictment. This moment precedes transfer of a case to court and usually gives an attorney some weeks in which to familiarize himself with the file and to ask that the investigation be reopened to receive his evidence.

While the draftsmen created a general rule excluding a defense attorney from the investigation until the end, they provided an exception for minors. When the accused was a minor, the Anashkin-Strogovich proposal was to apply. This exception was enlarged as a result of the public discussion to place within the exception also 'persons who because of physical or psychiatric deficiencies are unable to exercise by themselves their right to defense.' In its revised form the draft became law on 25 December 1958,⁴ and was incorporated in principle in the codes of the various republics.⁵

The matter did not rest with the compromise solution, for many Soviet lawyers were dissatisfied. Some began again after a lapse of years to argue for expansion of the right to what Anashkin and Strogovich had wanted. G.M. Shafir argued in 1967, '... the right of defense can be exercised more fully if the attorney participates during the very conduct of the investigation and not after its

¹ Strogovich, *cit.*, *supra*, note 12 at p. 348.

² Published in *Sotsialisticheskaia Zakonnost'*, No. 6 (1958) p. 17 and *Sovetskaia Iustitsiia*, No. 6 (1958) p. 42. In the draft the subject was treated as Art. 16.

³ Art. 16 of the draft became Art. 22 in the law.

⁴ *Vedomosti Verkhovnogo Soveta SSSR*, No. 1, item 15 (1959). An English translation was published as *Fundamentals of Soviet Criminal Legislation, The Judicial System and Criminal Court Procedure. Official Texts and Commentaries* (Moscow: Foreign Languages Publishing House, 1960).

⁵ Promulgated in the RSFSR by law of October 27, 1960. *Vedomosti Verkhovnogo Soveta RSFSR*, No. 40, item 591 (1960). The articles relating to right to defense are nos. 47 and 49. Codes of all republics are published in two volumes under the title, *Ugolovnoe Zakonodatel'stvo Soiuza SSR i Soiuznykh Respublik* (Moscow: Iurizdat, 1963).

For an English translation of the Russian Republic's code, see Harold J. Berman. *Soviet Criminal Law and Procedure: The RSFSR Codes* (Cambridge, Massachusetts: Harvard University Press, 1966).

conclusion.¹ While he was not successful in all that he hoped for, his article was a straw in the wind indicating the thinking in the halls of the Institute of Law of the Academy of Sciences of the U.S.S.R.

The revision of 1970 may be explained as the result of several factors making for change. One is the increased attention being given by Soviet scholars to the law and practice of other Marxian socialist countries. Poland had never retreated from the pre-war position giving the attorney a right to participate in the preliminary investigation, and its practice has produced no harm. At international conferences Western European and North American participants had rarely failed to comment on the limitations of the Soviet codes. It is possible that Anashkin's current position on the Supreme Court of the U.S.S.R. has played a part, especially since the President of the Court, A. Gorkin, has demonstrated on occasions his determination to enhance protection of the innocent in procedural law.² At his venerable age, he has great influence.

With these various influences for reform, the decree of 31 August 1970 has taken shape. As far as the outside world can determine the development has been quiet. No advance warning of its impending promulgation had been given before it appeared in the press. Its enactment was not even mentioned at a conference of the International Association of Legal Science held in Moscow during the very week when the decree was published in the official gazette. Only well after its promulgation were its provisions brought to public attention in the Soviet mass media. Consequently, the event is being taken calmly, perhaps because it is less than many had hoped to achieve.

The August 1970 amendment to the fundamentals appears to be yet another compromise between those Soviet policy makers who fear that a defense attorney may use the knowledge obtained during the preliminary investigation to conceal evidence and those who sense no such fear. By its terms two major changes are made to expand the right: (1) If the prosecutor in the case consents, a defense attorney may be permitted to participate in any case where the accused requests him and from the moment advocated by Anashkin and Strogovich; and (2) the appointment of a defense attorney is mandatory if the crime carries the possibility of a sentence of death, but only after the investigation is completed and the indictment presented.

¹ G.M. Shafir, 'Pravo no Zashchitu' / The Right to Defense /, *Sovetskoe Gosudarstvo i Pravo*, No. 2 (1967) p. 47. For an English translation of the pertinent paragraphs, see J.N. Hazard, I. Shapiro and P.B. Maggs, *The Soviet Legal System* (Dobbs Ferry, N.Y.: Oceana Publications, Inc., 1969) p. 103.

² The primary features of the debate are set forth in J.N. Hazard, *Communists and Their Law* (Chicago: University of Chicago Press, 1969) p. 142.

Less substantial changes made by the amendment are to include adoption of the detailed language of the 1960 Russian Republic code defining the physical and psychological deficiencies justifying appointment of an attorney at the early stage. The words are the 'speechless, deaf, blind and other persons who cannot because of their physical or psychiatric deficiencies exercise by themselves their rights to defense; and persons who do not use the language of the judicial proceedings.'

The amendment also expands the category of persons qualified to appear to representatives of labor unions and other public organizations as well as persons who may be permitted to appear as friends of the defendant under the codes of the republics concerned.

No authoritative interpretation of the amendment had been published by February 1971, but the official journal of the Office of the Procurator of the U.S.S.R. and of the Supreme Court of the U.S.S.R. carried a leading article in its issue of October 1970 on the group of events concerning law which had occurred during the late summer.¹ The amendment thus became linked with several documents, the most important being a resolution signed by the Central Committee of the Communist Party and the Council of Ministers of the U.S.S.R.² This seems to have emerged from discussions at the July 1970 plenum of the Central Committee. The resolution declares the work of the courts and prosecutors of great service to the state, but plagued by shortcomings which need to be overcome so as to struggle more decisively with crime and to adhere more closely to the norms of socialist legality.

Beyond paraphrasing the amendment on the right to defense, the leading article said nothing. No indication was given of what instructions were given prosecutors on acceding to requests for the attendance of defense attorneys. It is not evident whether they are to be restrained or generous in granting consent.

The reform in the right to defense coincided with reestablishment of a Ministry of Justice in the U.S.S.R. and in each of the Republics. The newly appointed Minister for the U.S.S.R., Vladimir I. Terebilov, a former judge of the U.S.S.R. Supreme Court, was soon quoted in a press account as saying that his task was to provide organizational guidance to the courts and by no means to interfere in any of their decisions.³ Perhaps he was cautious because he knew that

¹ 'Zabota partii i pravitel'stva ob ukreplenii pravoporiadka i zakonnosti v strane,' / The concern of the party and government over the strengthening of law and order and legality in the country /, *Sotsialisticheskaia Zakonnost'*, No. 10 (1970) p. 4.

² Reproduced in *ibid.* at p. 3. An English translation of the resolution taken from *Pravda* and *Izvestiia* of 1 September 1970 is published in *Current Digest of the Soviet Press*, Vol. 22, No. 3 (6 October 1970) p. 1.

³ *Pravda*, 11 September 1970, p. 3. English translation in *Current Digest of the Soviet Press*, Vol. 22, No. 3 (6 October 1970) p. 5.

the Ministry had previously been abolished in 1956¹ under criticism that its agents had been interfering in the decisions of judges.² In recounting the problems ahead he said his plans included guidance of legal staffs of state economic ministries, improvement of court houses and introduction of uniforms for bailiffs as officers of the law.

At about the same time an *Izvestiia* columnist who has written occasionally about legal matters and the improvement of measures to protect the innocent urged that courthouses be remodelled to add to their dignity. She even proposed that judges be robed so as to raise the court above everyday reality.³

The 1970 reforms must be examined in the light of the continuing debate between two groups of Soviet patriots who have demonstrated quite different views on how their social and economic system may be advanced. One group still fears an enemy which they do not define but which they suspect able to upset society if not held to account by law enforcement agencies unhampered by rigid rules. The other has confidence in the courts and believes them essential to the humanistic society for which the public longs. The proposals they make seem to them to be related to the good society.

Read in this light the 1970 amendment to the right to counsel is seen as a limited victory for those who think that the fears of the early years of the Soviet system are no longer well founded. As such a victory, limited though it be, the amendment is encouraging to those who watch for the advancement of the cause of justice throughout the world. The perfect society has not been attained, but there is hope that Soviet policy makers will eventually see their way clear to further steps in which a defense attorney will be permitted not only during the preliminary investigation but immediately after the arrest as certain Supreme Courts are now requiring in the implementation of real due process of law.

¹ *Vedomosti Verkhovnogo Soveta SSSR*, No. 12, item 250 (1956).

² N. Morozov, 'On organization of the court system,' *Izvestiia*, 18 May, 1958. English translation in J.N. Hazard and I. Shapiro, *The Soviet Legal System* (Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1st ed. 1962) p. 48.

³ Olga Chaikovskaia, 'The majesty of the court,' *Literaturnaia Gazeta*, No. 37 (1970) p. 12. English translation in *Current Digest of the Soviet Press*, Vol. 22, No. 3 (6 October 1970) p. 2.

POLITICAL TRIALS AND OBSERVERS

by

Maitre EDMOND MARTIN-ACHARD *

Ever since man has lived in organised societies, there have been political trials.

During recent centuries, the number of such trials has steadily increased and their importance, their repercussions and the memory they have left have sometimes been considerable. Without going back to the flood or even to Catiline, we can quote: Philibert Berthelier, Mary Stuart, Ravallac, Major Davel, Marie-Antoinette, Louis XVI, Charlotte Corday, the Duke of Enghien, Field-Marshal Ney, Dreyfus, Gandhi, the 'incendiaries' of the Reichstag, the accused in the Nuremberg trials, the victims of Stalin's purges, Field-Marshal Pétain and General Salan.

In our own time, political trials are as frequent and as controversial as they were in the past. We need only think of the recent trials in Greece, Spain, Russia and Africa to be convinced of this.

I should like very simply to give some indications as to the nature of these trials.

I shall try to clarify first the conception of a political offence and then the characteristics of a trial which deals with such offences and the part played by governments, judges, lawyers, the opposition and, finally, observers.

Political offences

Although the term 'political offence' is often used, it cannot be said to represent any very exact idea. Positive legal systems, the Swiss Penal Code for instance, do not usually make any distinction between political offences and common law offences.

Of the crimes and offences which are punishable by law, a certain number are considered as being of a political nature – a conception

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which those concerned with jurisprudence or case law have tried to clarify.

For certain authors who accept the so-called subjective theory, what counts is the intention of the offender, his political aims and motives, his purpose namely to attack the State or its institutions. Other authors adopt the objective theory, according to which an act is punishable if it threatens the existence or the political organisation of the State. In that case, what is important is the nature of the law which has been infringed.

Clearly, this theory permits a very wide interpretation of the notion of a political offence. The question still remains whether or not a political offence has been committed in certain complex cases where political and criminal factors are closely interrelated.

This classification becomes particularly important if there is a question of extradition; Switzerland for instance, among other countries, does not extradite a person who has committed a political offence in another country and then taken refuge on Swiss territory.

According to the laws governing federal courts, in order to be considered as essentially of a political nature, an act must have been committed with the intention of damaging the political or social organisation of the State. The act must be in direct relation to this intention, which is accepted as the aim of a political party.

But, even if the final aim envisaged is political, the criminal law aspects of the act may nevertheless be considered as more important than the political aspects if particularly atrocious methods have been employed to achieve the aim.

Obviously, this theory of the predominance of one or the other aspect is difficult to apply. It confers on federal judges very wide powers of assessment.

If we were to attempt to define a political offence, we would say that it is a violation of the penal laws of a state in which the primary aim of the lawbreaker is to attack the political or social structures of that state.

Professor Jean Graven, in his lectures at the University of Geneva, put it even more simply: 'political offences are criminal offences which are different from others in that they have political aims or motives'.

Political offences and political trials

Although, like the term 'political offence', the concept of a political trial has never been very clearly defined, it has in fact passed into common use to indicate that legal proceedings have been instituted against a person or a group of persons on the grounds that they have committed an offence or a crime against the State or its institutions, against the authorities, against the regime.

For a government, the purpose of a political trial is to punish the offenders whom it considers as enemies, to frighten the opposition and to demonstrate its uncompromising independence with regard to foreign powers.

For the opposition, whether internal or external, a political trial is often seen as an opportunity to prove its strength by the vigorous reactions it provokes.

In order to advance the cause of a party or a movement, demands will be put forward for the release of those accused or for the reprieve of those already condemned.

If the court refuses clemency, those condemned will become heroes and martyrs; if it shows clemency, it will be said to have yielded to the pressure of protest.

In this way, political trials create a situation uniting or opposing vast numbers of human beings, of different nationalities and races.

The protest movements of which we have spoken are often the expression of a real sense of solidarity and of unquestionable generosity, even though they are occasionally used by hidden forces to further the ends of a particular ideology or party, or of a State.

In such cases, mass emotion is manipulated with consummate skill so that those involved are not even always conscious of what is happening.

I should like to quote the conclusion of a reader's letter published in the issue of the journal 'Réforme' dated 2 January 1971 and referring to the Burgos trials. While these trials provoked a rather remarkable unanimity of opinion outside Spain, they also produced certain observations showing an unusual degree of independence. The letter published in 'Réforme' says, among other things:

'I refuse to join in, because I suspect trickery and the pulling of strings to use us as puppets. And I, who have every right to shout twenty times 'Down with Franco' (all the male members of my family died under Franco's bullets or in his prisons, and the others had to accept exile, with all that that implies of separation and suffering), I refuse to admit that anyone, Basque, Maoist or any other sort of propagandist, has the right to use our resentment or our suffering, to use the sense of common humanity and the thirst for justice shared by people of different political convictions to serve ends which are not openly expressed. The one thing to be demanded in this case was that human rights be respected and that the tribunal be free to make every effort to find out the truth, whatever it might be, and to apply the rules of justice.'

For someone with an independent and considered judgment, what is important is to know what the defendant has done, to discover his motives, verify the truth of his confessions, the way in which the preliminary investigation has been carried out and the laws applied.

But, generally speaking, the statements made by the prosecution and by the opposition are absolutely contradictory. For the first, the accused is a monster, a brigand, a particularly loathesome creature; for the other he is a hero or a martyr.

In this way, political trials are often used for propaganda purposes by governments as well as by the opposition.

In fact they constitute a dangerous weapon capable, on occasion, of rousing millions of people to hostility and creating an atmosphere of cold war.

An examination of political trials

Political trials usually leave an unpleasant impression on those who have attended them.

Among the trials at which I myself have been present, I may mention, when I was a student, the hearing before the Swiss Federal Criminal Court, in 1933, of the so-called '9th of November affair'; the trial of a socialist militant by a military tribunal in Vienna in 1934; much later, in Paris in the 1960's, the case of the Barricades in Algiers and the prosecution by the Government of the advocate, Maître Isorni. Besides these, as an observer for the International Commission of Jurists, I attended the trial in Salonika, in November 1968, of members of the 'Defence of Democracy' movement, part of that which took place in Athens in March 1969, and finally the Yaoundé trials in December 1970. I can only confirm this painful reaction.

It is certainly true that, judging quite objectively, one cannot compare the procedures of the Swiss Federal Court and the penalties it imposed with the judgments given by the military courts referred to above which, except for that in Paris, were extremely severe.

It would nevertheless be true to say that a political trial rarely satisfies an independent lawyer and that it leaves an uncomfortable feeling, if only because it so often brings out the serious discords existing within the same country. One knows that family quarrels are the most painful.

This sense of embarrassment comes, above all, from the fact that the judges appear to be the representatives of the State which is being threatened or attacked by the defendants. Under an authoritarian or a military regime, emergency or military courts fall under the direct authority of the government, and it is to be feared that they act at one and the same time as judge and litigant.

What often shocks in political trials is the way in which the preliminary investigations have been carried out, usually amounting only to a police enquiry with all that that can mean in the way of brutality employed to obtain confessions and denunciations, in some cases false confessions and false denunciations.

Often the investigating magistrate does no more than obtain from the defendant confirmation of the statements made to the police. Sometimes he will note that the accused retracts his confession, but the court often takes into consideration only the original confession obtained by the police.

In many countries, a lawyer is allowed to assist his client only after the completion of the preliminary investigation (this is still true in several of our cantons). This means that the defending lawyer has no possibility of seeing that the investigation is carried out in accordance with legal principles.

(It should however be added, in this context, that in the Swiss cantons referred to above the lawyer can ask the investigating magistrate to obtain further information.)

Furthermore, it too often happens that the defending lawyer receives the relevant papers and is allowed to see the defendant only a few days before the trial, giving him too short a time to study the matter thoroughly, to talk with the defendant, to see that the necessary witnesses are called and to prepare his case.

In certain trials, the defendant is even refused the assistance of a lawyer. He appears alone before the court, without either legal or moral support.

Sometimes the court itself assigns him a lawyer, who cannot act with any real independence with regard to the government.

This remark should not be taken as a general criticism of all lawyers assigned by a court to defend a prisoner; indeed, they often fulfil their task with diligence, talent and generosity.

In some cases, the lawyer is directly or indirectly threatened by the court. If he criticises the government, the regime or certain magistrates, he risks being arrested for contempt of court, suspended or disbarred.

A lawyer who is committed to a cause is faced with a difficult problem. If he is openly opposed to the regime, he will have little hope of persuading, or even of being heard. He will scarcely be listened to by the judges, who will look upon him as an enemy.

A more objective, less partial counsel will often obtain better results for the prisoner he is defending; he maintains a certain contact with the court, weighs circumstances and the immediate interests of the defendant.

In Athens I heard both these types of lawyer: the passionate advocate, a brilliant representative of the genius of his race, with the eloquence of a Demosthenes, attacking the government, protesting against the procedures employed and the preliminary investigation of the case; and, on the other hand, the cool, level-headed and realistic lawyer who tries to save whatever can be saved, to convince the judges that to show clemency would do honour to themselves and prove the strength of the regime.

Both attitudes, which are the expression of the temperament of the lawyers, are permissible and to be respected, provided agreement has been reached beforehand between the defendant and his counsel as to the line to be adopted.

In certain cases the defendant chooses his lawyer because he shares his political convictions, and he agrees that the defence shall be that of the ideology they share rather than of his own personal interests.

In such cases, the lawyer can scarcely hope to win the ear of the court if he tries to turn the court into a protest meeting.

But there are truths which it is so good to proclaim that neither counsel nor defendant will be deterred by even the most serious risks.

What satisfaction for an advocate to be able once again to express freely in public what he believes to be true, and to cherish the hope – sometimes perhaps the foolish hope – that freedom will yet triumph.

It sometimes happens that there is a conflict between the defendant and his counsel. A few years ago, for instance, in a country which was passing through a period of revolution, the rebels sometimes resorted to the following practice: they threatened a citizen with death if he did not himself kill a police commissioner.

Terrified, the man did as he was told. Then, when he was arrested, he did not dare, or did not choose, to reveal the terrible blackmail to which he had been subjected. He chose the counsel indicated to him by those who had ordered him to kill. But the lawyer, himself one of the rebels, sacrificed his client to the interests of the cause, suppressing all information concerning the circumstances which had driven him to commit his crime.

These circumstances, which were sometimes known to the judge, could hardly be taken into account since they had not been produced in evidence.

In a tragic situation of this kind, the lawyer is betraying his client, unless the latter has consciously decided to keep silent for the sake of the cause.

Much could be said concerning the part played by defence lawyers in political trials and of the skill and courage shown by many of them in difficult conditions.

I remind you of the words of de Sèze, the defender of Louis XVI, addressed to the members of the National Convention: 'It is true that there is today no power so great as yours, but there is one which you do not possess: the power to commit an act of injustice'. And I would like to pay homage to all those who, at the risk of their profession, their liberty and even their life, have defended with an admirable professional conscience the interests of their clients.

I think of Chaveau-Lagarde, Marie-Antoinette's lawyer, whose defence of his client led to his own arrest; of Berriyer, declaring:

'I offer the Convention the truth and my head; it can dispose of the one when it has heard the other', and of so many other courageous defence lawyers who have often shown their worth in the course of political trials.

In such situations we are far from what is sometimes called 'the pettifoggery of the law courts'. As in many other cases, what is at stake is the defence of the essential rights of man, which can be assured only by an advocate.

If it is right to assist those who are accused and almost systematically placed in a position of inferiority in a political trial, it is also important to facilitate the task of those who are defending them.

In this respect, I am sorry that the large associations like the International Union of Lawyers, the International Bar Association or the International Association of Democratic Lawyers have given but little attention to this problem. It is of course interesting to deal, in our conferences, with problems of etiquette of law or of procedure. But is it not also vitally important to ensure that lawyers enjoy professional independence in relation to the State - in our democracies as well as elsewhere - and to create a real sense of professional solidarity towards those who are threatened or condemned because of the independence they have shown in the exercise of their profession.

If a prisoner is not allowed the advice and assistance of a lawyer, his position is seriously compromised. He does not know what are his legal rights, what he can demand, in what conditions he can appeal.

There will be no defending counsel there to present the objective or subjective arguments in his favour. No-one to bring out the human aspects of the case.

When a government refuses to allow a prisoner the assistance of a lawyer, it is like refusing a doctor to a man who is seriously ill.

Another factor which makes it impossible to be sure that a trial is properly conducted is a refusal to open the proceedings to the public. In Salonika and Athens, the public were admitted but the courts were small. In Yaoundé, there were large numbers of people both inside and outside the court. In other places the public have not been admitted.

In such cases, with no independent check on the way in which the trial is conducted, every kind of injustice is possible.

Sometimes, to save appearances, the trial is theoretically open to the public, but in actual fact the court is small and filled with policemen, in uniform or in civilian clothes, and there is no room even for the families of the defendants.

In other cases, the trial is faked, the prisoner has been forced to rehearse beforehand what he will say, and he repeats it for the

benefit of the court, the public and the radio.

We know that in the case of Arthur London, even his own wife was convinced of his guilt.

All these circumstances I have enumerated explain why certain political trials inspire a profound bitterness in observers, whether they have followed them on the spot or from afar.

We should however stress the fact that, in some cases, political offenders appearing before military or emergency courts have been granted the essential rights of defence. A State which, in this way, observes accepted legal procedures gives proof of its respect for justice and the degree of civilisation it has reached.

Observers

I should like now to give some consideration to the role of observers.

It has happened quite often that a foreign government or a national or international association has sent an observer to follow a political trial.

The International Commission of Jurists, the League of Human Rights, Amnesty International and the Association of Democratic Jurists have sent observers to a number of trials in Cuba (1960), South Africa, Ethiopia, Spain, Israel, Turkey, Portugal, Ceylon, Burundi, Morocco, Greece and Brazil.

Governments asked to accept the presence of observers may adopt different attitudes :

- they may clearly state that they accept the presence of observers,
- they may tolerate such a presence, or
- they may refuse.

In Salonika we were accepted; in Athens we were tolerated for two days, then practically excluded. Finally, as was the case in Yaoundé, the government may itself invite the attendance of observers through an international association.

One may assume that a government which invites the presence of observers considers that it is acting in accordance with legal principles. Conversely, a government which refuses to accept observers may be presumed to have something to hide from public opinion.

In order to justify their refusal, certain states maintain that this is their right as a sovereign state. In fact, the presence of foreign observers constitutes an interesting problem of international law, and one to which I have found few references in my reading.

With regard to national sovereignty - a subject about which,

on the contrary, much has been written - Basdevant¹ points out that

“ When we speak of the sovereignty of the State we do not imply that the State is free from all obligation to observe the rule of law, but simply that there is no established human authority higher than that of the State... If we observe international practices, we shall find that the sovereign State is subject to international law... The sovereignty of the State and the submission of the sovereign State to the rule of international law constitute two factors in the existing international order...”

For the moment, effective international law has shown little interest in the question of the presence at political trials of observers sent by governments or by neutral international associations. But it may be suggested that this is a matter which might well become the subject of careful study, and even of the introduction of certain regulations.

The idea of special missions is well known, and even that of observers sent by one State to another, with the consent of the latter, with the mission of studying a specific question or achieving a particular objective.

This problem is the subject of a report prepared by the Yugoslav professor Milan Bartos², a member of the International Law Commission, in 1967, and also of a Convention adopted by the General Assembly of the United Nations on 8 December 1969³.

While it may be that there is a certain analogy between the sending of observers to a political trial and the sending of an official mission by one State to another, it cannot be said that the two problems are exactly the same.

We are of the opinion that, if it can be admitted that a State should, with certain justifiable exceptions, accept foreign observers according to usual practice, it is on the basis of ‘international courtesy’. ‘International courtesy’ (Comitas Gentium) is a well-known concept in international law. Auguste de Bulmerincq defines it as the sum total of the rules which, by tacit agreement, are observed in relations between States but which are not legally binding. An American publicist, Herbert Wolcott Bowen, has described it as ‘a combination of good manners, friendliness and respect’.⁴

We consider that, on the basis of this international courtesy, States - and particularly those which boast of their civilisation -

¹ Quoted in the ‘Dictionary of the terminology of international law’ published under the auspices of the International Academic Union, Sirey, 1960, p. 576.

² Special Missions and the United Nations, Office of Public Information, December 1969 - SM United Nations.

³ Convention on Special Missions, January 1970 - SM

⁴ See Dictionary of the terminology of international law, p. 125.

should feel bound to accept the presence of observers at their trials, whenever this is requested by a competent association which proposes to send observers whose qualifications and objectivity cannot be challenged.

If the trial is not open to the public, the refusal to admit observers is explicable, but failure to hold a public hearing justifies serious doubts as to the legality of the proceedings. An exception may be made in the case of a hearing held *in camera* for security reasons. But if a State makes excessive use of this justification for secret trials, it will become obvious that its real purpose is to exclude observers.

Systematic efforts to prevent an observer from carrying out his mission can be considered as equivalent to refusing him admission to the trial.

On the other hand, an invitation to send observers gives rise to a presumption in favour of any government or tribunal offering such an invitation without in any way preventing those observers from making objective criticisms, even of a most serious nature.

In brief, we consider that, except for certain special cases, a refusal by a State to accept qualified observers cannot be justified on the grounds of national sovereignty.

The role of the observer

It remains for me to give some indications as to the role of the observer.

(a) The observer will naturally be a jurist capable of checking the nature and the application of laws and legal procedures.

Before attending the actual hearing, he will have studied the laws having a bearing both on the main issue and on questions of procedure (and possibly the official documents in the case).

He will, if possible, meet the presiding judge, if only as an act of courtesy.

He will talk with the defence lawyers, and try to obtain permission to talk freely with the prisoners, either in prison or after a hearing. The second of these alternatives was granted us in Salonika, Athens and Yaoundé.

The observer will try to obtain for himself, on the spot, as much objective information as possible concerning the way in which the trial is being carried out. He will try to discover whether or not the defendants have been allowed to speak freely during the investigation by the police and the judge and, later, before the court, and whether the lawyers have been allowed absolute freedom to carry out their professional duties.

He will endeavour to form an opinion as to the relevant facts and as to whether or not the accused is in fact guilty.

He will refrain from any inopportune expression of opinion, though this does not, in my opinion, mean that he may not on occasion comment on the procedure followed. When he feels that it is his duty to do so, he can sometimes assist in the defence of the accused by getting in touch with the judges and giving them his opinion in a courteous and objective way.

It is often in the interest of the government, as well as of the defence, to be informed of the first impressions of the observers before the verdict is pronounced.

The observer will take care not to harm the interests of the accused by ill-timed pronouncements and demands.

He will refrain from any sort of participation in their political activities. Like a lawyer, he must avoid becoming an accomplice.

On returning to his own country, the observer will be wise to use a certain discretion lest his words be so interpreted as to harm the defendants.

The same discretion will be necessary when first of all he has to make his report to those who sent him.

(b) In our troubled world, where every opportunity is seized to stir up public opinion within and beyond national frontiers, political trials play an important role, as we have already said, and political parties try to use them in the interests of their cause.

Observers try, by their presence, their contacts and their comments to offer an unbiassed picture of what they have found.

As may be imagined, this is not easy since, even when certain facilities are granted them, it is often impossible to check everything.

They cannot follow the judges through all their deliberations, make sure that they have studied all the relevant documents and examined with scrupulous care the arguments and evidence put forward by the defence and that they have acted in complete independence.

One cannot follow the thoughts of the judges.

Nevertheless, an observer can express the opinion he has formed concerning the proceedings and the verdict itself on the basis of his own observations. His critique of the procedure followed may be more or less severe according to the leniency or the harshness of the verdict.

(c) Sometimes observers at the same trial will react differently according to their personal outlook, their natural sensibility or their political opinions. The important thing is that they should try to reach a conclusion which is just, in the fullest sense of the term.

To be just is a popular rather than a legal conception, but the term can be applied quite as fittingly to an observer as to a judge.

To be just means to try to reach a conclusion which takes into account all the circumstances, all the facts, the relevant laws, the intentions, the motives and the personality of the accused.

The differences between the conclusions reached by different observers are only a reflection of the relativity of human opinions.

There are however certain elementary rules of intellectual honesty which every fair-minded man should respect.

(d) Observers are not always conscious how important their presence at a trial is. Every time we established contact with a judge, and even more with a prisoner, his defending lawyer or his family, we were more and more deeply conscious of this.

Lawyers and prisoners have assured us that, but for our presence, they could not have expressed themselves as they did. But the government too stands to gain from our presence if it can convince us that the essential principles of true justice have been respected.

(e) We have sometimes been asked whether there was not a danger that our mere presence would seem to condone questionable proceedings and iniquitous trials. There undoubtedly is such a risk, and, realising this, we should act with extreme caution and constant vigilance.

The observer's motto might well be that of the homeopath: *primum non nocere*, above all not to harm; not to harm the cause of justice and thereby that of the accused who, before special Tribunals more than elsewhere, are threatened by the absolute power of the prosecution.

(f) We have already said that we consider that the acceptance of the presence of observers at a political trial should be seen as an act of international courtesy. But we suggest that it is an obligation which becomes particularly binding on those countries which voted for the Universal Declaration of Human Rights, or the United Nations Covenant which embodies its essential principles.

May I remind you of certain paragraphs in article 14 of the International Covenant on Civil and Political Rights:

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

Surely a State which has voted in favor of such principles (even if the resolutions have all too rarely been ratified) should be prepared to admit that it has an obligation to accept international collaboration and reciprocal controls.

(g) The primary aim of the International Commission of Jurists, which has its headquarters in Geneva, is to defend and promote the rule of law throughout the world and to work for the implementation of the principles embodied in the Universal Declaration of Human Rights.

To forward these aims, it has organised a number of conferences to lay down rules for the application of those principles.

One such conference, held in Vienna in 1957 and attended by jurists from a considerable number of countries, attempted to define what should be understood by a political offence and to establish certain rules as to the proceedings to be followed in such cases¹. Among the resolutions adopted we find the following:

Where political issues are involved... it is... important to insist on the precise formulation of the offence, the strict interpretation of the law by an independent judge and the presence of those procedural safeguards of the rights of the accused which have been recognized by all civilized nations with regard to the normal criminal procedure.

In all crimes where political considerations are involved it is essential that the judge should have the power in fixing the sentence to give due consideration to the motives of the accused by mitigating or reducing the punishment, even when an obligatory minimum sentence is in principle prescribed.

There is moreover a category of acts which cannot reasonably be treated as crimes, as for example the expression of opinion, political or otherwise...

Numerous speakers pointed out that the rights of political minorities are best protected by guarantees as to legal procedures, which, for some, included trial by jury. Other necessary guarantees include the absolute independence of the judiciary and the right of counsel to defend his case in a public hearing, *in the presence if he so wishes of international observers*.

(h) Whatever his convictions, be they extremist or moderate, left-wing or right-wing, every man is exposed to the threat of arbitrary judgment, of acts or procedures which are contrary to the fundamental rules guaranteeing the values which alone make life worth living.

Even those who scorn these principles may one day owe their own safety to them.

Would Generals Salan and Challe be alive and free today had they not benefitted from a respect for legal principles for which they themselves showed little concern in dealing with their opponents?

¹ See Newsletter of the International Commission of Jurists, No. 2, July 1957.

And so, the first effort must be made on the level of the individual before assuming a wider and more general character.

And the aim of that effort should be to develop the personality, an attitude of independence and of objective criticism, and honesty in one's personal relations.

When this has been achieved, then an opinion expressed has some real value.

It would be ridiculous to deny the social and economic injustices existing in the world, or its scandals, and we understand the desperate reactions and the abnormal methods which these often provoke. But these reactions and methods will not solve the problems of our time.

Illegal practices, arbitrary procedures lead to distressing acts of revenge and over-violent reactions.

As we have said, there is no doubt that public opinion is sometimes stirred up and used for hidden purposes, but it is none the less true that it often expresses a fundamental belief in the principles of justice.

The reaction of a certain sector of international opinion to the recent trials in Burgos and Leningrad was not so much political as human. What immediately shocked people was the form of the trials, the procedures adopted. Public opinion is very sensitive with regard to the observance of rules of procedure. One does not need to be a jurist to realise that the failure by a court to observe certain principles invalidates any judgment it may make and inevitably provokes certain reactions.

The writer of the letter to 'Réforme' which I quoted earlier asked only that human rights be respected and that the court be free to find out the truth whatever it was and to see that justice was done.

It is to be hoped that, in the spirit of the Declaration of Human Rights (which almost every State has approved), the great mass of human beings who long for peace, security and freedom will come to realise their own power and will use it to impose certain rules which will guarantee the observance of legal principles and certain standards of human behaviour, in all matters relating to law and justice as in other domains and, in particular, in that of political trials.

THE HAGUE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

by

GILLIAN M.E. WHITE *

During the last 10 years the number of incidents of aircraft hijacking has considerably increased. In the great majority of cases hijacking has been carried out by a person seeking to reach a destination which would otherwise have been inaccessible to him, but recent months have seen the development of hijacking by highly organised groups whose purpose has been to obtain hostages to be used as bargaining counters. These events have given rise to widespread concern throughout the world. This concern is reflected in the resolution adopted by the United Nations General Assembly on 25 November 1970 which condemned -

all acts of aerial hijacking or other interference with civil air travel, whether originally national or international, through the threat or use of force and all acts of violence which may be directed against passengers, crew and aircraft engaged in, and air navigation facilities and aeronautical communications used by, civil air transport.

In 1968 the General Assembly of the International Civil Aviation Organisation (ICAO) directed the Organisation's Legal Committee to consider what legal measures could be taken to counteract the growing menace of hijacking. The Tokyo Convention on Offences and certain other Acts committed on board Aircraft, adopted in 1963, includes provisions relating to jurisdiction in respect of offences committed on board aircraft and to the powers and duties of States in relation to offenders. It also requires contracting States to take appropriate measures to restore control of a hijacked aircraft to its lawful commander and to assist passengers and crew to continue their journey. However it was not designed as a deterrent to hijacking and something further was clearly needed. The Committee found that in the majority of States aircraft hijacking was not in itself an offence, so that if the hijacker was prosecuted at all it was not

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for the hijacking but some other act, perhaps of a less serious character, committed in the course of a hijacking – for example, depending on the circumstances of the case, for theft, assault or kidnapping. Another problem was that the State having the greatest incentive to prosecute the hijacker was usually the State of registration of the hijacked aircraft, but that State could not necessarily obtain the extradition of the hijacker from the State in which he had sought refuge. Furthermore the State in which the hijacker was found would not always be able to prosecute him, even if it wished to do so, because any offence he had committed in the course of the hijacking might have been completed outside the jurisdiction of that State. The Committee therefore prepared a draft convention designed to overcome these difficulties.

This draft convention was the basic working document before the Diplomatic Conference called by ICAO and held at the Hague from 1-16 December 1970. This Conference adopted the Convention for the Suppression of Unlawful Seizure of Aircraft. It was attended by representatives of 77 States, 50 of whom signed the Convention when it was opened for signature on 16 December. The purpose of the Convention is to provide a legal framework which will ensure that hijackers do not go unpunished. The key provisions are Articles 1 and 2 under which contracting States agree that hijacking as such is an offence to be punishable by severe penalties, Article 4 which ensures that those States which have the greatest incentive to prosecute the hijacker and are in the best position to do so have jurisdiction over the offence, Article 6 which makes provision for the arrest of offenders, Article 7 which provides that a State which does not extradite the hijacker shall refer the case to its prosecuting authorities and Article 8 which requires contracting States to treat hijacking as an extraditable offence.

The offence of hijacking is defined by Article 1 of the Convention as being committed by any person who on board an aircraft in flight unlawfully by force or threat of force or any other form of intimidation seizes, or exercises control of, that aircraft or attempts to do so or acts as an accomplice of a person who hijacks or attempts to hijack. (Incidentally the Convention does not give the offence a name, but the term hijacking – derived from the shout of ‘Hi Jack’ given by those about to appropriate the illicit liquor being carried by bootleggers in the days of prohibition in the United States – is commonly used in the English speaking world). Article 1 may be thought to define the offence somewhat narrowly in that it includes only acts committed on board an aircraft in flight. However the term ‘in flight’ is widely defined in paragraph 1 of Article 3, as extending from the time all external doors of the aircraft are closed after embarkation until any door is opened for disembarkation. In the case of a forced landing (whether ‘forced’ for technical reasons or by the activities of a hijacker) the flight is deemed to continue

after landing until competent authorities take over responsibility for the aircraft and for persons and property on board.

If paragraph 1 of Article 3 widens the scope of Article 1, the subsequent paragraphs of Article 3 narrow it. Paragraph 2 excludes from the scope of the Convention the hijacking of aircraft used in military, customs and police services. This is because special considerations apply to State aircraft and they are, by reason of Article 3 of the Chicago Convention, outside the purview of ICAO. The remaining paragraphs of the Article exclude from the scope of the Convention hijacking which takes place on what may be called a domestic flight – that is to say a flight which begins and ends in the territory of the State of registration of the hijacked aircraft. Such hijackings were excluded because many States represented at the Diplomatic Conference considered that since in such a case there is no international element, the matter was one for domestic law and not for an international convention. If the flight is scheduled to begin and end in the territory of the State of registration, but the aircraft is hijacked to a foreign destination, then the Convention does apply. Moreover, if, after the hijacking of an aircraft on a domestic flight, the hijacker escapes from the State of registration to another contracting State, the provisions of the Convention relating to arrest, prosecution and extradition of the hijacker apply.

Article 2 of the Convention provides that hijacking shall be punishable in contracting States by severe penalties. It is open to each contracting State to determine what penalty it regards as severe. Some proposals were made at the Diplomatic Conference for prescribing a minimum penalty in the Convention, but since concepts of appropriate punishments differ widely from State to State it would have been impossible to reach general agreement on this.

The States which normally are in the best position to prosecute the hijacker are the State of registration and the State where the aircraft lands with the hijacker on board. Article 4 therefore begins by requiring both those States to take such measures as may be necessary to establish jurisdiction over the offence by ensuring that their law is such that their courts would have jurisdiction to try him in all the circumstances covered by Article 4. However, the State of registration may not always have a direct interest in the hijacking, since the aircraft concerned may have been 'dry-leased' (that is to say leased without crew) on a long term basis to a lessee in another State. In such a case the State of the lessee might well wish to prosecute whereas the State of registration, even if it wished to do so, might not be in a position to prosecute, since the crew of the aircraft, who would usually be essential witnesses in any prosecution, would return not to the State of registration but to the State of the lessee. Article 4 therefore also provides that, in the case of an aircraft leased without crew, the State where the lessee has his principal place of business, or if he has no such place of business, his permanent

residence, shall also take necessary measures to establish its jurisdiction over the offence. The jurisdiction of the State of the lessee does not oust that of the State of registration. The Convention provides that both States must establish jurisdiction.

Thus paragraph 1 of Article 4 requires the State of registration, the State of landing and, in the case of a leased aircraft, the State of the lessee, to establish jurisdiction over the offence of hijacking. However it could happen that the hijacker escaped from the State of landing to another contracting State and that the State of registration and the State of the lessee were unable to obtain his extradition from that State. It was thought important that in such a case the State to which the hijacker had fled should have jurisdiction to prosecute him. The proposal had been mooted in some quarters that this could be achieved by declaring in the Convention that hijacking was an international offence (in the sense in which piracy is such an offence) so that any State where the hijacker was found has jurisdiction over him irrespective of his nationality and the place where he had committed his offence. However piracy has come to be regarded as an international offence as a result of general acceptance by all nations over many centuries. It is doubtful whether the same result could be achieved in respect of a newly created offence by a mere declaration in a Convention, unless all nations adhered to that Convention. The Hague Convention does not therefore adopt this method of dealing with the matter, but achieves a similar result by providing in the second paragraph of Article 4 that each contracting State shall establish its jurisdiction over the offence where the hijacker is present in its territory and it does not extradite him pursuant to Article 8 of the Convention to the State of registration, the State of landing or the State of the lessee.

Article 4 requires the State of registration, the State of landing and the State of the lessee to establish jurisdiction not only over the offence of hijacking, but also over any other acts of violence against passengers or crew committed by the hijacker in connection with the offence. Thus if for example the hijacker murders a crew member, those States will be in a position to prosecute him both for murder and hijacking. There is no such requirement on the State in whose territory the hijacker is present (unless of course it is also one of the States mentioned above). That State can only prosecute for associated acts of violence where its domestic law and the applicable rules of international law so permit.

Article 4 expressly provides that it does not exclude any criminal jurisdiction exercised in accordance with national law. Thus although the Convention does not require a State to establish jurisdiction over, for example, hijacking committed by its own nationals in foreign aircraft anywhere in the world, it does not preclude it from doing so.

Article 4 does not require any State to exercise jurisdiction, merely

to establish it. Nor does it lay down which State is to have priority in the exercise of jurisdiction. A proposal was made at the Diplomatic Conference for establishing priorities in the Convention, but this was rejected on the grounds that it would be too difficult to determine what the priorities should be. Which of the States among those which have jurisdiction will in fact prosecute in any given case will depend upon the circumstances.

Article 6 of the Convention requires any contracting State in whose territory a hijacker or alleged hijacker is present to take him into custody if it is satisfied that the circumstances so warrant. Custody may only be continued for as long as is necessary to enable criminal or extradition proceedings to be instituted and the hijacker must be assisted in communicating with the nearest appropriate representative of the State of which he is a national. The State which has taken the hijacker into custody must hold a preliminary inquiry into the facts and must notify the State of registration and, in the case of the hijacking of a leased aircraft, the State of the lessee and any other interested state of its findings and of whether it intends to prosecute the hijacker.

The prosecution of hijackers is dealt with in Article 7 of the Convention which requires the contracting State in the territory of which the hijacker is found either to extradite him or to submit the case to its competent authorities for the purpose of prosecution. Those authorities must make their decision whether to prosecute or not 'in the same manner as in the case of any ordinary offence of a serious nature under the law of that State'. These words were included because some South American States apparently take different factors into consideration in deciding whether to prosecute for a 'political' offence from those taken into account in deciding whether to prosecute for an 'ordinary' offence, with the result that a 'political' offender may be treated more leniently than an 'ordinary' offender. The Convention therefore requires that for the purpose of deciding whether to prosecute or not (though not for the purpose of deciding whether to extradite or not) hijacking must always be treated as an 'ordinary' (though serious) offence.

Article 7 was the subject of considerable controversy at the Diplomatic Conference. A number of States, including both the United States and the Soviet Union, argued that States should be under an obligation in every case either to extradite or prosecute the hijacker. However such a provision would have been unacceptable to many other States who considered that there could be exceptional cases where, perhaps for lack of evidence or for humanitarian reasons, the circumstances would not justify bringing a prosecution. Those States considered that, although cases where proceedings were not brought would be rare, they could not accept a fetter on the discretion enjoyed by their prosecuting authorities to decide whether or not to prosecute in the light of all the facts of a case.

Article 8 of the Convention deals with the extradition of hijackers. In the case of States which make extradition conditional on the existence of an extradition treaty, hijacking is deemed to be included as an extraditable offence in any existing extradition treaty between contracting States, and must be so included in any extradition treaty entered into between such States in the future. When a contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from a contracting State with which it has no treaty, Article 8 provides that the requested State may, at its option, treat the Convention as a legal basis for extradition in respect of the offence of hijacking. In the case of contracting States which do not make extradition conditional on existence of a treaty, Article 8 requires them to recognise hijacking as an extraditable offence between themselves.

Normally a State can secure the extradition of an offender only where his return is sought in order to prosecute him for an offence committed in the territory of the State requesting extradition. In order that such a restriction should not prevent the States required by paragraph 1 of Article 4 to establish jurisdiction over the offence from being able to secure extradition of the hijacker, paragraph 4 of Article 8 provides that, for the purpose of extradition between contracting States, the offence shall be treated as having been committed not only in the place where it occurred but also in the territory of the State of registration of the hijacked aircraft, the State of landing and the State of the lessee. Apart from this, Article 8 in no way affects any restriction there may be in national law on the extradition of an offender. Thus, for example, the law of many States prohibits the extradition of political offenders or of nationals of the State requested to extradite. The Convention does not require such rules to be waived: it merely provides that hijacking is an extraditable offence and leaves it to national law to determine whether in any given case the hijacker should be extradited. Nor does the Convention in any way prevent a State from granting political asylum to a hijacker.

Article 8 was another subject of considerable controversy at the Diplomatic Conference. A number of States, again notably the United States and the Soviet Union, would have liked the Convention to have removed some of the restrictions on extradition contained in domestic law. In particular there was a strong body of opinion for providing that contracting States should not refuse to extradite the hijacker on the grounds that he had political motives for hijacking an aircraft. However such a provision would have rendered the Convention unacceptable to most Western European States and many others. Another point of controversy was the provision referred to above that a contracting State has the option, in the absence of an extradition treaty, of considering the Convention as a legal basis for extradition. The Netherlands proposed that

this should be a mandatory not an optional requirement, which would have had the effect of making the Convention tantamount to an extradition treaty. Many States were in favour of this strengthening of the Convention, but it would have been unacceptable to a number of others, in particular the majority of African States.

In addition to the provisions of the Convention designed to ensure that the hijacker is brought to justice, there are a number of ancillary provisions. Article 9 provides that where a hijacking has occurred or is about to occur, contracting States shall take appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control and requires contracting States to facilitate the continuation of the journey of the passengers and crew and to return the aircraft and its cargo without delay. There is a very similar provision in Article 11 of the Tokyo Convention, but the provision in The Hague Convention is cast in somewhat more positive terms. Article 10 calls upon contracting States to assist one another in connection with criminal proceedings brought against hijackers. This provision envisages for example such assistance as may be provided by a 'commission rogatoire' or by the transmission of exhibits to be used in evidence. Article 11 requires contracting States to report to ICAO information concerning hijacking incidents and measures taken as a result of them.

The Convention, which was drawn up in four authentic texts in the English, French, Russian and Spanish languages, is now open to all States for signature in Moscow, London and Washington. It will enter into force 30 days after the deposit of instruments of ratification by 10 States which participated in the Diplomatic Conference held at the Hague.

It will be noted from what has been said above concerning the provisions of the Convention relating to the prosecution and extradition of hijackers, that some States would have liked a somewhat stronger Convention which would have bound each contracting State in every case either to prosecute a hijacker found in its territory or to extradite him (whether he had committed the offence of hijacking for political reasons or not) to a State which would prosecute him. However it was apparent that many States could not accept such provisions and the purpose of the Convention would be frustrated if it were not widely adopted. If the Convention is to serve as an effective deterrent to hijackers, it is essential that it should come into force throughout the world as quickly as possible, so that the hijacker will know that any State to which he goes has jurisdiction to try him and must either refer his case to its prosecuting authorities or extradite him to a State which wishes to prosecute him. Only thus will safe havens for hijackers be eliminated. This fact was recognised in the resolution of the United Nations General Assembly, referred to at the beginning of this article, which ended by calling upon States -

“to make every possible effort to achieve a successful result at the Diplomatic Conference which has been convened at The Hague in December 1970 for the purpose of the adoption of a convention on the unlawful seizure of aircraft, so that an effective convention may be brought into force at an early date”.

Hijacking is not the only danger which threatens the safety of civil aviation today. Attacks on aircraft on the ground and other acts of sabotage are also matters which, to quote the preamble to The Hague Convention, ‘undermine the confidence of the peoples of the world in the safety of civil aviation’. The Legal Committee of ICAO has drafted a further convention designed to deter the commission of such acts and this draft is to be considered by another Diplomatic Conference to be held under the auspices of ICAO in September of this year.

THE CASE OF SELF-DETERMINATION FOR FORMOSA/TAIWAN

by

Dr. LUNG-CHU CHEN *

Of the 14 million inhabitants on Taiwan, 12 million are native Formosans (Taiwanese) whose ancestors began to settle in Formosa four centuries ago from southeastern China to be free from authoritarian Chinese rule, and 2 million are Chinese, who fled to Formosa with Chiang Kai-shek in 1949 when the Chinese Communists took over the Chinese mainland.

During the seventeenth century, foreign powers, notably the Portuguese, Spaniards and the Dutch, as well as dissident Chinese forces, vied for control of the island. In 1683 the Ch'ing Dynasty of China nominally annexed Formosa and kept it under very loose control for about two centuries. In fact, in 1871 the Ch'ing government of China stated to Japan that Formosa was 'outside its jurisdiction' and thus it could not be held responsible for what Formosans had done to Japanese nationals in Formosa. Not until 1887 did the Ch'ing government proclaim Taiwan a province of China. But shortly afterward, defeated in the Sino-Japanese War of 1894-1895, China ceded Formosa to Japan. From 1895 to 1945, Formosa was ruled by Japan.

When Japan surrendered, the Allied Supreme Commander authorized the Nationalist Chinese authorities to accept the surrender of Formosa from the Japanese and to temporarily undertake military occupation of the island as a trustee on behalf of the Allied Powers, which took place on October 25, 1945. The subsequent atrocities, corruption, deprivations of human rights and maladministration of the Nationalist Chinese occupation authorities were such that Formosan rage exploded on February 28, 1947, after the Chinese police killed a Formosan woman for selling untaxed cigarettes. During the '2-28 Incident', as the event is remembered by Formosans,

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about 20,000 Formosan leaders were massacred in March, 1947, by the occupation forces and reinforcements sent by Chiang Kai-shek from the Chinese mainland. The Formosan leaders who survived either went abroad or underground to struggle for self-determination and independence for Formosa. Thus began the worldwide Formosan Independence Movement of today.

On January 21, 1949, at the height of the Chinese civil war between the Communists and the Nationalists, Chiang Kai-shek legally resigned as the President of the Republic of China, a post he assumed on May 20, 1948, in Nanking, and was succeeded by the Vice President Li Tsung-jen.

When Mao Tse-tung defeated the Nationalist Chinese (Kuo-mintang) forces in October 1949 and proclaimed the establishment of the People's Republic of China, Chiang Kai-shek fled with the remnants of his military and civilian personnel to Formosa. On March 1, 1950, Chiang Kai-shek unconstitutionally and illegally reimplemented himself on Formosa as the 'President' of the 'Republic of China' and the actual ruler of Formosa.

This was done against the wishes of the Formosan people and in defiance of the trust of the Allied Powers, for, at that time, Formosa was legally still a Japanese colonial territory under the Allied military occupation of 1945, as reaffirmed in the Japanese Peace Treaty of 1951. Under that treaty Japan renounced all her 'rights, title and claim' to Formosa but the Treaty did not specify any beneficiary. The sovereignty of Formosa was not transferred to either the so-called Republic of China or the People's Republic of China.

Only a mandate from the people living on Formosa could have justified the legitimacy of the continued rule of Formosa by Chiang's Nationalist Chinese regime. Knowing the free will of the Formosan people, the Chiang Kai-shek regime does not dare hold a plebiscite in Formosa. It has continued to occupy Formosa illegally by terroristic and police state tactics against the wishes of the Formosan people. The domination, subjugation and exploitation of the people of Formosa by the corrupt Chiang regime has made Formosa a de facto non-self-governing territory under the despotic rule of a foreign invader and aggressor. Formosa is a captive territory.

The exiled Nationalist Chinese regime represents neither the people of China nor the people of Formosa. Members of the three national congressional bodies, who were elected on the Chinese mainland in 1947 and 1948 for 3- and 6-year terms and later fled to Formosa, are still in office, in Formosa, without ever having been elected by the Formosan populace.

The Formosans comprise over 85% of the island's population yet are allowed only a 3% token representation in the three congressional bodies. 32 out of 1448 in the National Assembly (which elects the President and the Vice President), 17 out of 447 in the Legislative Yuan (in charge of legislation and appropriation), and

6 out of 74 in the Control Yuan (empowered to censure, impeach, audit, and give consent to certain key Presidential appointments).

Formosans have no civil rights. There is no freedom of expression and no freedom of association and assembly; the judiciary is under military domination; ex post facto laws are enforced for political acts committed prior to the passage of the prohibition statutes; there is no remission of punishment for political offences committed by persons under-age; leniencies are denied a political offender's family; and there is no parole for political offenders. In sum, there is a total denial of due process of law.

The 14 million people living on Formosa – a larger population than more than two thirds of the U.N. Member States – are self-sufficient and capable of managing their own affairs. They want to become masters of their own destiny and establish a free and independent country of their own.

The fundamental principle of self-determination embodied in the Charter has been affirmed and reaffirmed, applied and reapplied in many concrete cases since the United Nations came into being. In its Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960, Resolution 1514 (XV), the General Assembly declared, among other things, that :

(1) The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation; and

(2) All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

This Declaration, buttressed by numerous other Assembly resolutions and international practice, and the International Covenants on Human Rights adopted by the General Assembly in 1966 have solemnly established that :

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 1, Paragraph 1 of both Covenants).

A legally, politically and morally sound solution to Formosa's indeterminate status is to hold a plebiscite in Formosa under the auspices of the United Nations so that the Formosan people can freely express their will and determine their future.

Only when Formosa becomes free and independent can the China question be answered. There is only one China. When it fulfils the Charter requirements, it should be seated in the United Nations. There is only one Formosa, which should be free and independent.

Judicial Application of the Rule of Law

Contempt of court: plea of acting under superior orders

On November 7, 1970, the Applicant, who had recently been acquitted of a charge of complicity in an attempted assassination of the President of Cyprus, was deported by air to Greece. The deportation was carried out notwithstanding an order by a Judge of the Supreme Court prohibiting his deportation until the Court had determined the legality of the deportation order. The applicant was a Greek national, but he claimed that he was also a citizen of Cyprus, in which case there was no power under the constitution to deport him. The respondents to these proceedings for contempt of Court were the Republic of Cyprus, through the responsible ministers, and six individuals, being the Migration Officer, the Acting Commander of Police, three other police officers and the General Manager of the air company involved. Copies of the Court order had been served on all these respondents before the applicant was deported.

The Attorney General and Minister of the Interior made statements declaring in open Court the adherence of the Government to the Rule of Law and their absolute respect for the courts of the Republic. The Government arranged for the applicant to be returned to Cyprus before these proceedings were heard.

The individual respondents all filed affidavits apologising to the Court and pleading that they had acted under superior orders. The extracts from the judgments reported here deal with this defence. The Court decided by a majority (Triantafyllides and Loizou J. J. dissenting) that fines would be adequate to meet the case, but indicated that such leniency was unlikely to be repeated if such a case came before the Court again.

VASSILADES, P.

“ It has been said time and again that the course of justice must not be deflected or interfered with by any individual or person in authority, whoever he may happen to be. And that “ those who strike at it, strike at the very foundations of our society ”. To maintain law and order, the courts have—and must have—power to deal effectively with those who offend against, or impede the course of Justice and the State Courts who administer it. Our constitution has, very wisely, guaranteed such power...

“ The plea of acting in contempt of the law, under superior orders, is entirely unacceptable. It amounts to placing such orders above the law. And this is completely unacceptable in a State operating under the Rule of Law. Failure to appreciate the importance of placing the law (and individual rights judicially declared) above executive or other orders described as

“superior orders”, is a dangerous frame of mind... It is either the Rule of Law (and respect for individual legal rights judicially declared) or the rule of “superior orders”. They cannot co-exist as rulers. They are mutually exclusive.

“Any person obeying an illegal order, does so at his own personal peril... An order to act in disobedience or disregard of a Court order is obviously an illegal order. It is an order to violate a judicially declared legal right of another person.”

TRIANTAFYLLOIDES, J.

“They most unfortunately lost sight of the fact that their primary duty, both as public officers and citizens, was to the State; and that though the State is administered by the Government it is ruled by laws which exclude, under any circumstances, obstruction of, or interference with, the administration of justice.”

JOSEPHIDES, J.

“It is true that, in the execution of his office, a police officer is required to obey the orders of his superiors in the Force but such orders must be “lawful” orders and not orders which involve a breach of the law (cf. section 17 of the Police Law, Cap. 285); and it is well settled that all persons in the Republic, including police officers and public officers, are bound to obey an order made by a court of competent jurisdiction, irrespective of superior orders. If there is complaint against a court order, the proper course would be for a police officer or public officer to obey the order in the first instance and then apply to the court to have it discharged.”

SUPREME COURT OF THE REPUBLIC OF CYPRUS

(Vassiliades P., Triantafyllides, Josephides, Stavrinides, Loizou and Hadjianastassiou J. J.)

IOANNIDES and THE REPUBLIC OF CYPRUS and OTHERS

Decided 12 January 1971

Case No. 344/70.

The right to a fair trial when “flagrant délit”¹ procedure proves inadequate

Mr. Michel Magnen, a teacher in training at the Saint-Cloud Higher College of Education, considered by the Director of the College a brilliant

¹ This is a special summary procedure under French law where the prosecution allege that the Defendant was caught red-handed.

student with a balanced personality, was charged with resisting and using violence against members of the police force, on 12 February 1971, when with four other young men, he distributed leaflets outside a factory in the Paris region protesting against working conditions. According to the police, at the end of the distribution, first three and then eight policemen in plain clothes went into action to arrest the five men after shouting "Police". They claim that Mr. Magnen punched one of them in the face; one of the others seized a shovel, as a result of which a police constable drew his pistol; Magnen struggled to get away and the others in fact escaped. Mr. Magnen denied these statements, saying that an attempt was being made "to turn the minor offence of distributing leaflets into the much more serious offence of assaulting the police. You start by inventing a punch and a shovel, he added, and in the end you've invented a whole Reichstag fire!"

The Court, considering that the available evidence was inadequate, ordered that further information be produced for the consideration of the presiding judge. The reasons given for this order were as follows:

"The procedure normally adopted for "flagrant délit" has, in the present case, proved inadequate... Although the statements made by the members of the police force were precise and consistent, it nevertheless appears to the court that the period imposed for the preliminary proceedings was too brief to enable the police authorities to carry out all the investigations required to ensure a fair trial... It is the duty of the Court, in order to eliminate all danger of an over-hasty judgment, to ask for fuller information... It would be unfortunate, and indeed might be considered a negation of the fundamental principles of legal process, if a case which had been dealt with by a summary procedure, in view of the particular circumstances in which the offence had been committed, should appear in a new and different light on an appeal being lodged".

The Court ordered an examination by a medical expert of the three policemen who had appeared as prosecution witnesses, and the release of the defendant, who had been in custody since 14 February 1971. The case was then adjourned until 10 May 1971.

Two features of this case are particularly worth noting: first, the fact that the "procédure de flagrant délit", a procedure which is quick but often dangerous for the defendant, was abandoned in order to ensure that the defendant had a fair trial and, second, the desire of the Court to avoid a situation in which the findings of fact, for which there was insufficient proof, might appear in a different light if the case were taken to appeal.

23RD CHAMBER OF THE "TRIBUNAL CORRECTIONNEL DE PARIS"

(Comparable to Quarter Sessions)

PRESIDENT OF THE COURT: M. ARNAUD

Decided: February 22, 1971.

Basic Texts

International Convention on the Elimination of All Forms of Racial Discrimination

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted, and opened for signature and ratification, by the United Nations General Assembly on December 21, 1965, at the close of its twentieth session. It entered into force on 13 March 1969.

The International Commission of Jurists are publishing the text of the International Convention on the Elimination of all Forms of Racial Discrimination in accordance with Resolution 2544 (XXIV) of the United Nations General Assembly, and Resolution 3B (XXVI) of the Commission on Human Rights declaring 1971 to be 'International Year to combat Racialism and Racial Discrimination'.

THE STATES PARTIES TO THIS CONVENTION,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinctions of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid*, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

Bearing in mind the Convention on Discrimination in Respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention Against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows :

PART I

Article 1

1. In this Convention the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.
3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.
4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure to such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms, and promoting understanding among all races, and to this end:
 - (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 3

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate, in territories under their jurisdiction, all practices of this nature.

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

Article 5

In compliance with the fundamental obligations laid down in article 2, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by Government officials or by any individual, group or institution;

(c) Political rights, in particular the rights to participate in elections, to vote and to stand for election — on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular :

- (i) the right to freedom of movement and residence within the border of the State;
- (ii) the right to leave any country, including his own, and to return to his country;
- (iii) the right to nationality;
- (iv) the right to marriage and choice of spouse;
- (v) the right to own property alone as well as in association with others;
- (vi) the right to inherit;
- (vii) the right to freedom of thought, conscience and religion;
- (viii) the right to freedom of opinion and expression;
- (ix) the right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular :

- (i) the rights to work, free choice of employment, just and favourable conditions of work, protection against unemployment, equal pay for equal work, just and favourable remuneration;
- (ii) the right to form and join trade unions;
- (iii) the right to housing;
- (iv) the right to public health, medical care and social security and social services;
- (v) the right to education and training;
- (vi) the right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafés, theatres, parks.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from amongst their nationals who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilizations as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated indicating the States Parties which have nominated them and shall submit it to the States Parties.
4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at the Headquarters of the United Nations. At that meeting, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.
(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals subject to the approval of the Committee.
6. The States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 9

1. The States Parties undertake to submit to the Secretary-General for consideration by the Committee a report on the legislative, judicial, administrative, or other measures that they have adopted and that give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.
2. The Committee shall report annually through the Secretary-General to the General Assembly on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

Article 10

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.
3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.
4. The meetings of the Committee shall normally be held at the Headquarters of the United Nations.

Article 11

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six

months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notice given to the Committee and also to the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it thinks necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereinafter referred to as 'the Commission') comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution to the matter on the basis of respect for this Convention.

(b) If the States Parties to the dispute fail to reach agreement on all or part of the composition of the Commission within three months, the members of the Commission not agreed upon by the States Parties to the dispute shall be elected by two-thirds majority vote by secret ballot of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations, or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States Parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission and the Commission may call upon the States concerned to supply any other relevant information.

Article 13

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States Parties to the dispute. These States shall within three months inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of States Parties concerned to the other States Parties to this Convention.

Article 14

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article, shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged.

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

Article 15

1. Pending the achievement of the objectives of General Assembly resolution 1514 (XV) of December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories, and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the Administering Powers within the territories mentioned in sub-paragraph (a) of this paragraph and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee related to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the territories mentioned in paragraph 2 (a) of this article.

Article 16

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

PART III

Article 17

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.
2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by the Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to this Convention object to it.
3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

Article 22

Any dispute between two or more States Parties over the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall at the request of any of the parties to the dispute be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

Article 23

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General.
2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such a request.

Article 24

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of the following particulars :

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) The date of entry into force of this Convention under article 19;
- (c) Communications and declarations received under articles 14, 20 and 23;
- (d) Denunciations under article 21.

Article 25

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1.

ICJ News

COMMISSION

Three new Members have been elected :

The Right Honorable Lord GARDINER (United Kingdom). Called to the Bar in 1925, Lord Gardiner was one of the outstanding advocates of his day. He was Chairman of the Bar Council 1958-1959 and Lord Chancellor of England from 1964 to 1970. His period of office saw the establishment of the Law Commission which he had long advocated. He is a former alternate member of the Executive Committee of the International Commission of Jurists.

Mr. Seán MACBRIDE, S.C. (Ireland). Served with outstanding success as Secretary General of the International Commission of Jurists from 1963-1970. Educated in France and Ireland, he was called to the Irish Bar in 1937 and became a Senior Counsel in 1943. He was a member of the Dail Eireann (the Irish Parliament) 1947-1958, Minister of External Affairs, Ireland, 1948-1951 and President of the Council of Foreign Ministers of the Council of Europe in 1950. He his Chairman of the Executive Committee of Amnesty International and Chairman of the International Peace Bureau.

Mr. John Thiam-Hien YAP (Indonesia). Having studied in Indonesia and Holland, Mr. Yap became an Attorney-at-Law in 1950. He was a member of the Constituent Assembly, 1958-1959. He is Vice-Chairman of "Pengadbi Hukum" (performing functions similar to an Ombudsman), Chairman of the Commission on International Aid of the National Council of Churches, Vice-Chairman of the Executive Board of the Christian University in Indonesia and Acting Secretary-General of the Indonesian Institute for the Protection of Human Rights.

SECRETARIAT

Among other international conferences and meetings attended by the Secretary General were a meeting in Strasbourg of the Council of the International Institute of Human Rights (April, 1970), the International Congress in Dublin of the International Society for Military Law and Law of War (May, 1970), the Congress in Helsinki of the International Association of Democratic Lawyers (July, 1970), the Congress of Arab Lawyers in Algeria (September, 1970), a Council of Europe Colloquy on Human Rights in Brussels (September/October, 1970) and the World Conference on Religion and Peace at Kyoto (October, 1970).

Mr. Seán MacBride retired in November 1970 after seven years as Secretary General, and was succeeded by Mr. Niall MacDermot, Q.C. Mr. MacDermot, who was born in Ireland in 1916, comes from an Irish legal family. He is a Bencher of the Inner Temple and a former

Member of Parliament. He was a Minister in the Labour Government 1964-1968 and was Minister in charge of the Parliamentary Commissioner Bill which established the British Ombudsman. He was formerly Treasurer of "Justice", the British Section of the I.C.J.

NATIONAL SECTIONS

The AUSTRALIAN Section published the third issue of their journal "Justice" (with articles on Bills of Rights in Australia, the Rule of Law in New Guinea, the Rights of Members of the Armed Forces and Ratification of the U.N. Human Rights Covenants) and a report of their New Guinea Conference entitled "The Rule of Law in an Emerging Society". They were joint organisers of a seminar at Port Moresby on the Constitution of New Guinea. A committee of the Section prepared a report on the Public Order Bill relating to Papua/New Guinea with detailed criticisms and proposed amendments. Some of their proposals were accepted by the Administration. A proposal to set up an Ombudsman in Tasmania passed in the Lower House but was narrowly defeated in the Upper House.

The AUSTRIAN Section held a seminar in February 1971 on the operation of the European Convention on Human Rights.

The BRITISH Section, "Justice", held conferences on "The Need for a Ministry of Justice", "Police Interrogation" and (jointly with the French Section) "Consumer Protection". They published reports on "Complaints against Lawyers", "Complaints against the Police", "The Prosecution Process" and "Home-made Wills".

The CONGO (Kinshasa) Section published articles in the principal newspapers and held meetings on the Rule of Law.

In ECUADOR a section has been formed at Guayaquil and the statutes approved. This is in addition to the section at Quito.

The FRENCH Section, "Libre Justice", among other activities, held a colloquium which received national publicity on the question of single or plural judges.

The GERMAN Section held an important Conference at Lübeck with the Danish, Norwegian and Swedish Sections on "Privacy and the Mass Media".

The HONG KONG Branch of "Justice" published a report proposing an Ombudsman in Hong Kong, which received widespread support. Owing to Government opposition, a Bill to implement the proposal was defeated in the Legislative Council. The Section also published a detailed report on the Government Public Order Bill. The Government paid tribute to the report and accepted 30 of its criticisms or proposed amendments.

The IRANIAN Section has met regularly, held lectures and conferences and published articles in the press (including a report on the legal aspect of differences which had arisen between Iran and Iraq). Members have been active in helping to amend the law of civil procedure and the penal code.

The IRISH Section issued a public statement in December 1970 urging extreme caution upon the Government in the use of their powers of internment without trial.

The ITALIAN Section organised an international colloquy on Freedom of Movement in the European Community in May 1970.

The JAMAICA Section's proposals for an Ombudsman were defeated by the Government Party for the second time after a debate on a motion in the Senate by one of the Section Members, Senator Dudley Thompson.

The JAPANESE Section published the third number of their journal "Law and Human Rights". In addition to lectures on human rights questions, a study meeting was held in Tokyo in November on protection against environmental pollution.

The MYSORE Section (India) issued a widely published statement in June 1970 condemning strongly proposals by certain prominent personalities advocating military rule.

The NORWEGIAN Section held seven meetings during the year, and has put forward a proposal that "The international protection of Human Rights" should become a new special subject for the degree in Law.

The PHILIPPINE Section have been active in local issues involving the Rule of Law. They held a joint meeting with the Philippine Society of International Law in January 1971 on the proposed Japanese-Philippine Treaty.

The SENEGALESE Section, "The Senegalese Association for Juridical Studies and Research", celebrated the fifth year of its Review of Senegalese Law, prepared a series of radio broadcasts on "Law at the Service of the Nation" and held meetings on "The Contribution of African States to International Law", "Political Offences" and "Democracy and Development".

The SUDAN Section published a pamphlet in Arabic on Human Rights which has been distributed in a number of Middle East countries.

Books of Interest

PROTECTION DE LA VIE PRIVEE ET DEONTOLOGIE DES JOURNALISTES

by Jean-Louis Hebarre, 227 pages, "L'Institut international de la Presse", Zurich

THE HUMAN RIGHT TO INDIVIDUAL FREEDOM

(A symposium on World Habeas Corpus). Edited by Luis Kutner, foreword by Arthur J. Goldberg, University of Miami Press, 1970, 249 pages. Coral Gables, Florida, USA

RELIGIOUS MINORITIES IN THE SOVIET UNION (1960-1970)

Minority rights group — Report No 1, 38 pages. London, 1970

PORTFOLIO FOR PEACE

(Excerpts from the writings and speeches of U Thant, United Nations, New York, 1970, 140 pages

INTERNATIONAL PROTECTION OF HUMAN RIGHTS

by Alessandra Luini del Russo, 1970, 361 pages. Lerner Law Book Co., Inc., 509 E Street, N.W. — Washington, D.C. 20001

ESCRUTANDO UN HORIZONTE

by Osvaldo Illanetz Benitez, Valparaiso, Chile, 1970, 314 pages

THE PROBLEM OF SOVEREIGNTY IN THE CHARTER AND IN THE PRACTICE OF THE UNITED NATIONS

by Djura Nincic, 1970, 358 pages. Martinus Nijhoff, The Hague, Netherlands

A YEARBOOK OF AIR AND SPACE LAW

— Volumes I, II and III, edited by R. H. Mankiewicz, McGill University Press, Montreal

— Volume IV, edited by M. A. Bradley and I. A. Vlastic, McGill University Press, Montreal

THE INTERNATIONAL LAW OF COMMUNICATIONS

— Edited by Edward McWhinney, A. W. Sijthoff, Leyden, Netherlands, Oceana Publications, New York (1970)

THE RIGHT OF HOT PURSUIT IN INTERNATIONAL LAW

by Nicholas M. Poulantzas, A. W. Sijthoff, Leyden, Netherlands

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