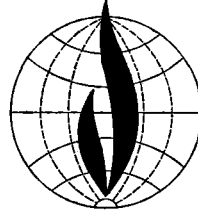


For the Rule of Law

THE REVIEW



INTERNATIONAL COMMISSION OF JURISTS

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No. 2

June 1969

What is The Review?

MOST OF OUR READERS already know **The Review**. For they have long been familiar with the International Commission of Jurists itself. The two-fold task of the Commission was set out in the first issue of *The Review* :

“On the one hand, the Commission must focus attention on the problems in regard to which lawyers can serve society and provide lawyers with the information and data that will enable them to make their contribution to society in their respective areas of influence. On the other, it must be the corporate voice of every branch of the legal profession in its unceasing search for a just society and a peaceful world.”

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IN THE FIRST ISSUE of **The Review**, March 1969, the *Special Study* was an article by Mr Pictet of the Red Cross on the Laws and Customs of Armed Conflicts. In *Basic Texts*, resolutions on Human Rights in Armed Conflicts were published. *Human Rights in the World* contained articles on Eastern Europe, Greece, Latin America, the Maghreb and Zambia.

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Human Rights in the World

The Inter-American Human Rights Convention

At the time when the Inter-American Commission on Human Rights was set up (in 1960), it was not possible to draw up a legal instrument defining the rights that the Commission was to protect and promote.

Although the principles of the Universal Declaration of 1948 have been recognised by the vast majority of States, its individual provisions are not binding on the countries that have adhered to it. It is for this reason that the European Convention on Human Rights of 1950 sets out the rights that are to be protected in binding provisions which are interpreted and applied by the European Commission and Court of Human Rights. In the absence of such a regional convention, the Inter-American Commission took as its guide the American Declaration of the Rights and Duties of Man, adopted at Bogota in 1948. This declaration has gradually gained legal force through its application by the Commission.

Next September, an Inter-American Conference of Experts is to be held at San José, Costa Rica, with a view to the discussion and signature of an Inter-American Convention on Protection of Human Rights. This long-awaited Convention, which has been drawn up by the Inter-American Commission, sets out the human rights that are to be protected and establishes detailed implementation procedures. Its signature by the American States will be an immense contribution to the effective protection of human rights at the regional level.

The provisions of the Convention are discussed below. One general comment can however be made here : the Draft Convention is much more modern in spirit than its European predecessor in that it gives substantial emphasis to economic, social and cultural rights, which form a new and genuine dimension of human rights today.

The Draft Convention

The Draft Convention has a preamble and three parts: Part I entitled *Protection*; Part II, *Organs of Protection*; Part III, *General Provisions*. The preamble contains the following interesting paragraphs:

Recognizing that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality, wherefore they justify international protection in the form of a convention reinforcing or complementary to that offered by the internal law of the American States;

Considering that these principles have been asserted in the Charter of the Organization of American States and in the American Declaration of the Rights and Duties of Man and that they have been strengthened and developed in other international instruments, universal as well as regional in scope.

Part I sets forth the rights protected. It not only gives them legal force and definition, but in many cases, also lays down detailed rules governing their implementation so as to forestall any difficulties of interpretation. This is a far-reaching advance in a field in which there has at times been a tendency to give a narrow construction to certain fundamental freedoms, to the detriment of the individual concerned.

In Article 3, on 'the right to life', the Convention establishes rules applicable to the death penalty in countries which have not abolished it. In no case may capital punishment be inflicted for political offences.

Articles 6, 7 and 8 set out the right to personal freedom and integrity together with the minimum standards of criminal law and procedure safeguarding the rights of the accused with respect to his trial and the manner and duration of his detention.¹

Article 9 of the Convention is interesting:

Anyone who has been deprived of his liberty unlawfully or through judicial error shall be compensated for the losses suffered as a result of the sentence and for the time during which he was deprived of liberty, except in the event that the person convicted contributed to making the judicial error possible.

Article 12 recognises freedom of opinion and expression. Restrictions on the right are prohibited under paragraph 3 as follows:

The right of expression shall not be restricted by indirect methods or means, such as the use of government and private monopolies of

¹ For the minimum standards relating to the criminal process, see *The Rule of Law and Human Rights*, pp. 23 et seq.

newsprint, radio broadcasting frequencies, or of equipment used in the dissemination of information, or by any other means tending to block the communication and the circulation of ideas and opinions.

Article 20 sets out the freedom of movement and residence. Its very precise wording is similar to that of the conclusions reached at the Bangalore Conference of the International Commission of Jurists in January 1968.¹ The rules that it lays down in relation to restrictions on this fundamental freedom are clear and detailed.

Article 24 governs the suspension of a State's obligation under the Convention. Such suspension is authorized only in the event 'of war or other emergency which *threatens the independence or security of a State Party*'² and is to be applied only 'for the period of time strictly required by the exigencies of the situation'. Paragraph 2 seriously limits a State's power of suspension and is thus a valuable safeguard :

The foregoing provision does not authorize any suspension of the following rights : the right to life, integrity of the person, protection against arbitrary detention, due process of law, freedom of thought, conscience and religion, recognition of juridical personality, and the right not to be deprived of liberty for debts.

Part I of the Draft Convention concludes with Articles 25 and 26. The first paragraph of Article 25 aims at strengthening the protection of human rights at the national level. The signatory countries undertake to dedicate their efforts to adopting the provisions of the Convention in their domestic law. Under paragraph 2, they undertake to create the conditions most conducive to the realisation of certain fundamental rights. This paragraph provides in effect the framework of a full-scale development programme for the States Parties, and is thus of immense importance to the countries—most of them developing countries—where the Convention will be in force. Lastly, Article 26, which is a corollary of Article 25, by binding the States Parties to make periodic reports to the Commission on the progress made, aims at ensuring that the provisions of Article 25 will not remain merely a programme.

Article 25

1. The States Parties to this Convention recognize the need to dedicate their utmost efforts to adopting and, as appropriate, guaranteeing, in their domestic law, the other rights set forth in the American Declaration of the Rights and Duties of Man which are not included in the preceding articles.
2. The States Parties also declare their intention of including and, as appropriate, maintaining and perfecting, in their domestic

¹ See ICJ *Bulletin*, No. 33.

² Cf. Art. 15 of the European Convention : 'In time of war or other public emergency threatening the life of the nation . . . '.

legislation, the provisions most conducive to: substantial and self-sustained increase in the per-capita national product; equitable distribution of national income; adequate and equitable systems of taxation; modernization of rural life and reforms leading to equitable and efficient land-tenure systems, increased agricultural productivity, expanded use of undeveloped land, diversification of production and improved processing and marketing systems for agricultural products, and the strengthening and expansion of facilities to attain these ends; accelerated and diversified industrialization, especially of capital and intermediate goods; stability in the domestic price levels, compatible with sustained economic development and the attainment of social justice; fair wages, employment opportunities, and acceptable working conditions for all; rapid eradication of illiteracy and expansion of educational opportunities for all; protection of man's potential through the extension and application of modern medical science; proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food; adequate housing for all sectors of the population; urban conditions that offer the opportunity for a healthful, productive, and full life; promotion of private initiative and investment in harmony with action in the public sector; and expansion and diversification of exports.

Article 26

The States Parties shall report periodically to the Commission on Human Rights on the measures they have taken to achieve the purposes set forth in the preceding article. The Commission shall make appropriate recommendations and, when such measures have been widely accepted, shall promote the conclusion of a special convention, or additional protocols to this Convention, in order to include them in this Convention or in such other instrument as is considered appropriate.

Part II of the Draft Convention relates to the organs responsible for implementing its provisions: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. As has been mentioned, the Commission has already been in existence for some time; the only new body, therefore, will be the Court.

The Draft Convention retains the present structure and functions of the Commission and gives it new powers. The most important of these is the power to receive individual petitions (which in a sense it already has through a special interpretation of its Statute). Article 33 provides that 'any person, group of persons, or legally constituted association may lodge a petition with the Commission containing a report or complaint of a violation' of the Convention. Unlike that of its European counterpart, the Commission's competence to hear individual petitions does not depend upon acceptance by the countries concerned and its decisions are binding. This provision is a gigantic step in the evolution of implementation machinery and an extremely valuable safeguard for the individual.

The rules as to admissibility are the usual ones in such cases : the petition must not be anonymous, domestic remedies must have been exhausted, a decision on the subject-matter through another international procedure must not be pending, etc (Article 35).

Under the Draft Convention, the Commission may hear complaints filed by one State Party against another alleging a violation of human rights, provided that both States have recognized the Commission's competence to do so.

It is interesting to note, in relation to the complaints procedure, that once the facts have been clearly established, the Commission 'shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention' (Article 37 (e)).

If that course fails, the Commission is to draw up a report setting forth the facts and stating its conclusions. The report is then transmitted to the parties, who have three months in which to submit the matter to the Court and recognize its jurisdiction. If they do not, the Commission decides by an absolute majority vote whether the State against which the complaint has been brought has violated the obligations contracted on ratifying the Convention. If the Commission decides that it has, it 'shall prescribe a period during which the State concerned is to take the measures required by the decision of the Commission' (Article 40 (2)).

Before a case can be submitted to the Inter-American Court of Human Rights, both parties must have recognized the Court's jurisdiction.

The Court's judgments are final and without appeal (Article 55), though it may be requested for an interpretation.

Conclusion

Before this brief analysis of the Draft Convention on Protection of Human Rights is concluded, attention should be drawn to Article 66, which provides that the Convention shall enter into force 'as soon as seven States [i.e. one third of the States eligible] have deposited their instruments of ratification or adherence'.

It is sincerely hoped that the discussions at the San José Conference will be constructive and that any amendments submitted will be designed to improve the Draft Convention and, if possible, to broaden the scope of protection for the individual. It is also hoped that once the Conference is over, ratifications will be forthcoming so that another important area of the world will soon have an effective international instrument protecting individual rights.

Bulgaria's New Criminal Code

On 15th March 1968 the National Assembly of Bulgaria adopted a new Criminal Code, which came into force on 1st May of the same year.

This is the third code that the country has had. The first, that of 1896, was based on the Hungarian Criminal Code of 1878 but was also influenced by German criminal legislation. With the introduction of the soviet system of people's democracies after the second World War, reform of the law became necessary in the light of Bulgaria's new social, economic and political system. The resulting Code of 1951 was based, according to official comments at the time, on the Criminal Code of the RSFSR¹ of 1926 and its subsequent modifications. The new Code of 1968, which is in effect a more modern and elaborate version of its predecessor, is also largely based on the soviet criminal system. Professor M. Gelfer of Moscow, in a favourable comment on the Code, states:

The new law reflects the developments in Bulgarian criminal law, and the experience gained from the Soviet Union and other socialist countries in the fight against criminality.²

According to Professor Gelfer, the new Code has developed the general principles of socialist criminal law, particularly the concepts of 'socialist legality, socialist democracy, humanism and socialist justice and proletarian internationalism'.

After a drafting stage of four years, the Code was submitted to the Legal Committee of the National Assembly in October 1967, and examined there on 9th October. It was debated by the Assembly on the afternoon of 14th March, and adopted the following day.

An interesting innovation in the new Code is the role assigned to the various social organs in the fight against criminality. This may take different forms: 'social' courts³ may replace the ordinary courts for the trial of certain minor offences and suspended sentences may be given where the community takes on the rehabilitation of the offender. This innovation is regarded by socialist jurists as a step forward in the democratisation of the criminal process. However, the participation of the public in this field, through the social courts,

¹ The Russian Soviet Federated Socialist Republic.

² In 'The Characteristics of the New Criminal Code of the People's Republic of Bulgaria', *Socialisticheskaya Zakonnost* (Socialist Legality), Moscow, 1968, No. 9.

³ For the introduction of social (or Comrades) courts in Bulgaria in 1962, see *Bulletin of the ICJ.*, No. 15, pp. 1-4.

is still a controversial subject, even in the socialist countries of Eastern Europe.

The emphasis on social treatment of offenders is seen in the second paragraph of Article 1, the key article setting out the Code's objectives. Article 1 provides :

1. The aim of the Criminal Code is the protection of the social and state order of the People's Republic of Bulgaria, of the persons and rights of its citizens, of socialist property and the entire socialist legal order against all criminal encroachments upon them. At the same time, it has as its object the education of citizens in the rules governing community life in a socialist society.
2. In accordance with these objectives, the Criminal Code determines the socially dangerous acts that constitute offences, sets out the penalties applicable and provides for the cases where these penalties may be replaced by social and educational treatment.

Paragraph 2 then is said to introduce the concept of democratisation in penal policy: certain offenders, whose acts still remain criminal, will not be punished but will be dealt with in the manner provided for, with a view to their rehabilitation under the influence of society.

Paragraph 1 goes a step further than Article 1 of the 1951 Code. While the latter merely defined as its objective the protection of the social and state order, the new Code also extends protection to the persons and rights of citizens. This wider protection is in line with the soviet criminal reforms of 1958-1960.

Articles 1 (2) and 35 reiterate the classic principles of criminal law, falling under the maxim, *nullum crimen sine lege, nulla poena sine lege, nulla poena sine iudicio*. Only those acts which constitute offences under the Code are punishable, and only those sentences which are prescribed in the Code and are imposed by a competent tribunal may apply. Article 2 protects an accused person from retroactive criminal legislation. These principles, which are enshrined in the Universal Declaration and again in the International Covenant on Civil and Political Rights of 1966, are essential to the criminal process in any country.¹ Their embodiment in socialist legal systems, which began after the soviet criminal reforms, is a great advance. Another interesting provision in this 'General Part' of the Code is Article 36, which sets out the object of punishment :

1. The object of punishment shall be :
 - (a) To correct and re-educate the offender in the spirit of the law and the rules governing community life in a socialist society ;
 - (b) To serve as a deterrent for the offender in relation to his future action ;

¹ Cf. *The Rule of Law and Human Rights*, International Commission of Jurists, 1966, pp. 23-29.

(c) To serve as a deterrent and as a means of education for the rest of society.

2. Punishment shall not have as its object the infliction of physical suffering or the debasement of human dignity.¹

Article 37 regroups and extends the range of penalties and enumerates them as follows: imprisonment, corrective labour without imprisonment, confiscation of property, fines, exile (without imprisonment), deprivation of the right to exercise certain functions or a particular activity, expulsion from a particular town or village, withdrawal of a distinction or prize, down-grading in military rank and public condemnation. In addition, as an exceptional penalty, and in expectation of its complete abolition, the death penalty is authorised—by firing squad—for particularly grave offences which threaten the foundations of the People's Republic. In comparison with the earlier Code, the number of capital offences is reduced. In no case is the sentence mandatory; in fact, under Article 38, it may only be imposed for the crimes enumerated if the purposes set out in Article 36 cannot otherwise be achieved.

A major characteristic of the new Code compared with that of 1951 is the overall mitigation of the penalties applicable. Legislation appears to have followed the trend set by the courts which, for several years have tended not to apply the maximum penalties provided for in the earlier Code.

As already mentioned, the suspension of sentences is an important aspect of the new Code. Where the sentence applicable is imprisonment for a term of less than three years, or a lesser punishment, and the court is reasonably sure that the serving of the sentence is not indispensable to the offender's reform, the court may, after considering the circumstances and particularly the fact of a first offence, suspend sentence. In such cases the court will ask the community of workers to which the offender belongs to take on the obligation of supervising and rehabilitating the offender. The court which suspends sentence remains responsible for the control of the rehabilitation process. If, during the period of time fixed by the court, the person concerned commits another offence, he will serve the original sentence as well.

Statistics from the Bulgarian Ministry of Justice prove the effectiveness of this institution. From 1957-1959, of the 6322 persons receiving suspended sentences, only 729 (11.52%) had, up to 1966, committed a further offence. Of these, only 286 persons, or 4.5%, had committed the new offence during the period of suspension. Research had shown that relapses were much less frequent among offenders who had been granted suspended sentences (11.52%) than among other offenders, in whose case the average proportion of new offences was 30%.

¹ Paragraph 2 thus embodies Article 5 of the Universal Declaration.

The Second Part of the Code, dealing with specific offences, also contains considerable innovations, although the first chapter, concerning offences against the People's Republic, remains unchanged. The same political crimes appear with the same vague wording as in 1951 during the height of the Stalinist period.

Article 108, for example, sets out the offence of 'agitation and propaganda against the State':

Whoever, with the object of diminishing the power of the People's Republic or causing it embarrassment, propagates fascist or other anti-democratic ideology, or supports or incites the commission of crimes against the Republic, or publishes slanderous or libellous statements concerning the State or public order, shall be liable to imprisonment for a maximum term of five years.

Such an article opens the door to the suppression of any opinion not in line with official policies and to the punishment of non-conformists. It is regrettable that the modernisation, which is the characteristic of the Code, should have left political crimes intact. This demonstrates a serious fault in the structure of the Code, which elsewhere gives increased protection to citizens and their rights. This protection is emphasised by the precedence that the relevant provisions have in the Second Part (Chapters 2-4): concerning offences against the person, offences against the rights of citizens, and offences against marriage, the family and youth.

The protection of socialist property and other elements of the social, economic, political and military order follow later.

In a Code, which for the most part is modern and enlightened, it is most unfortunate to find old and repressive rules preserved in a vital and sensitive area. One may only hope that the courts will make full use of the positive elements and severely construe the negative.

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Nigeria / Biafra

Armed Conflict with a Vengeance

A state of war is a negation of the Rule of Law, and only under the Rule of Law can a structure which protects human rights and the individual exist.

For almost two years war has torn Nigeria. Basic rules of international law have been violated. Hundreds of thousands of people have died in direct combat, from indiscriminate attacks which have injured the civilian population and from starvation.

Similar violations of international law and of the humanitarian rules have been only too evident in the Vietnam¹ and Middle East armed conflicts.

It is not the task of the International Commission of Jurists to apportion blame. The Commission is only concerned with the application of the Rule of Law, and with the individual suffering caused unnecessarily and unlawfully when it is abrogated. In particular, the Commission has been concerned with the overall decline of respect for the individual and the increase in brutality which is eroding human standards. This tendency is above all demonstrated in the armed conflicts that disgrace our age; for a state of war gives rise to the most constant and brutal violations of human rights.

Suffering and International Law

The basic rule of international law governing armed conflicts is laid down in the Hague Conventions: 'The right of belligerents to adopt means of injuring the enemy is not unlimited.' This rule applies both to combatants and to non-combatants. In the case of the former, they are the obvious target of military operations, but *any suffering in excess of what is essential to place an adversary hors de combat is forbidden*. This prohibition is expressed in the Hague Convention, namely: 'It is forbidden to employ arms, projectiles or material calculated to cause unnecessary suffering.' In regard to combatants, it is a generally accepted rule that belligerents

¹ See *Bulletin of the ICJ*, No. 34: 'Human Rights in Armed Conflicts: Vietnam'.

shall refrain from deliberately attacking non-combatants. A major derivative from this is that *bombardments directed against the civilian population as such, especially for the purpose of terrorising it, are prohibited*. Attacks may only be directed against military objectives, and an objective is military only if its complete or partial destruction confers a distinct military advantage. The Hague Conventions also prohibit (*inter alia*) the attack or bombardment by whatever means of undefended towns, villages, dwellings or buildings. The Geneva Conventions prohibit attacks on medical service units and their personnel; they must at all times be respected and protected by the Parties to the conflict. The wounded and sick, whether combatants or civilians, must be respected and protected in all circumstances. Prisoners-of-war must at all times be humanely treated.

In the Nigerian conflict these rules have clearly not been consistently applied. Civilian populations have been attacked, as have hospitals, medical service units and other non-military installations. There are numerous reports of torture, the killing of civilians, medical personnel and prisoners, and of inhuman conditions for prisoners-of-war. There are also reports of the use of weapons calculated to cause unnecessary suffering.

Application of the Geneva Conventions¹

It is sometimes argued that the Geneva Conventions, the 'humanitarian law' governing armed conflicts, which now binds 120 States, only applies to conflicts of an international character. But whether the Nigerian conflict is purely internal, or whether it now constitutes a conflict of an international nature, there are two overriding considerations to be borne in mind. In the first place, Article 3 in all four Geneva Conventions provides :

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

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

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

¹ See, on this subject, the Special Study in *The Review* No. 1 : 'The Need to Restore the Laws and Customs relating to Armed Conflicts', by Jean Pictet.

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

In the second place, the Hague and Geneva Conventions are the formal expression of customary international law, and all States are bound primarily by the principles governing these Conventions. In all armed conflicts, whatever their nature, 'the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilised peoples, from the laws of humanity and from the dictates of the public conscience'.

The deaths of thousands of people, of whom the majority are civilians, do not encourage confidence that these principles are adhered to in the Nigerian conflict.

Responsibility

The original causes of the Nigerian conflict stem from the partition of colonial spoils at the turn of the century. But history cannot be called on to solve the present situation. Responsibility for ending this conflict rests on the belligerents, their supporters and on the whole international community.

The combatants, in ignoring respect for human rights and the laws of war prolong and increase unnecessary human suffering. Both sides have a duty to their people and to humanity to seek an end to the struggle and to settle their differences by peaceful means.

Other States whose actions directly or indirectly encourage the continuance of the war must remember that *all States*, whether or not they are party to a conflict, have bound themselves by the Geneva Conventions 'to ensure their respect in all circumstances'. States which are responsible in any way for the continuance of the war under the present conditions are thus in breach of their legal duties.

Finally, the collectivity of *independent African States* owe it to the future stability and self-respect of the African continent to seek untiringly a solution to the Nigerian conflict. By previous initiatives they have demonstrated their concern; these efforts must continue unabated.

The International Community

In law as in fact, the conflict in Nigeria can no longer be regarded as a matter of purely national concern. The proportions it has reached and its significance in the decline of international standards and the violation of human rights require that it be solved as a matter of priority by the international community.

Although previous efforts have failed, the United Nations, as the only collective organ of this community, could perhaps still take positive action. Under the Charter, the General Assembly 'may recommend measures for the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among nations...' A useful measure which the General Assembly might possibly recommend for the 'peaceful adjustment' of the Nigerian situation would be the appointment by the belligerents of a 'Protecting Power' to safeguard their interests and ensure the observance of international humanitarian law. Protecting Powers were frequently appointed under customary international law; specific supervisory functions are given to them by the Geneva Conventions in order 'to safeguard the interests of the Parties to the conflict'. The functions of a Protecting Power were entrusted by international custom to a neutral state, but under the Geneva Conventions they can also be entrusted to 'an organisation which offers all guarantees of impartiality and efficacy'. In regard to the Nigeria-Biafra conflict this is a matter to which the Organisation of African Unity might well give consideration.

Certainly it is time that this valuable international custom was revived in the modern context of armed conflicts. An initiative of this kind by the United Nations would set a precedent as a means of lessening the brutality of conflicts, and would accord with the aim expressed in the Charter 'to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained'.

The real defect in the application of the humanitarian conventions is of course that there is no organ with jurisdiction to punish violations. The Parties to the Geneva Conventions undertook to enact 'any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches' defined by the Conventions, including the wilful killing of persons protected by the Conventions, torture or inhuman treatment, wilfully causing great suffering or serious injury and extensive destruction and appropriation of property not justified by military necessity. But even if penal sanctions to prevent such breaches were provided in all States, how justly or effectively will they be applied in time of war? The summary execution of individual offenders is no convincing proof that the Conventions are being consistently respected and, in regard to offenders from the

enemy side, trial by the victors of the vanquished is not a valid or appropriate remedy. The long-term aim of the international community should be the establishment of a permanent international criminal jurisdiction to try breaches of the Conventions, and to try crimes against peace, war crimes and crimes against humanity as defined by the International Law Commission in the 'Nuremberg Principles'. An international tribunal could at least identify war criminals and have them branded as such by the international community. Even this sanction would be likely to have a restraining influence on individual acts of cruelty and brutality.

War is always a tragedy. It engenders bitterness, hatred, brutality and counter-brutality. The conflict in Nigeria is but one of the terrible examples of the extent to which violence and brutality have infected humanity and are being used to settle both internal and international disputes.

But if a state of war is a negation of the Rule of Law, the converse is equally true. The Rule of Law can and must be man's weapon against inhumanity and his instrument for peace.

Human Rights in Northern Ireland

A depressing factor in recent times has been the regression of human rights and of the application of the Rule of Law in different parts of Europe. In Portugal and Spain the situation has long been deplorable; for nearly two years human rights have been virtually abrogated in Greece and, despite some marked liberalisation in Eastern Europe, events in Czechoslovakia have set the clock back both in that country and in many other areas of Eastern Europe. It is to be regretted that Northern Ireland has also to be added to this depressing list of European areas wherein the protection of human rights is inadequately assured. This is all the more unfortunate as elsewhere in the United Kingdom there is due respect for human rights; the good reputation of the UK is thus vicariously damaged.

Sectarian Policies

It is true that the problems in Northern Ireland are not new; they may be said to have existed ever since the partition of Ireland in the early 1920s. However, recent protests and acts of police brutality in the area, together with the obvious sectarian policies of successive Northern Ireland Governments, have highlighted the issues. Public outcry and world opinion have led to discussions between the Government of the Province¹ and the Government of the United Kingdom, which exercises sovereignty over the area, and to the initiation of some reform programmes.

Two main areas of concern arise: from discrimination based on religious and political grounds and the provisions of the notorious Civil Authorities (Special Powers) Act of 1922. In Northern Ireland historical factors have rendered political and religious differences nearly synonymous. Over sixty per cent of the population favour unity with Britain and are usually Protestant; and the remainder of the population who are Catholic mostly favour unity with the Republic of Ireland.² This is only a rough approximation; some Protestants are opposed to the present regime and some Catholics support it. The political-religious discrimination also has economic overtones; the Catholic minority is for the most part underprivileged economically.

The rate of growth of the Catholic population is higher than that of the Protestant section of the population;³ accordingly, through the efflux of time, the Catholic population could become the majority. This basic factor accounts for much of the political and economic discrimination which has been systematically and ruthlessly exercised by the Belfast Government since the 1920s. Discrimination in housing and in employment has been utilised in order to weaken economically the Catholic minority and thus to preclude Catholics from acquiring property rights and to induce emigration.

¹ The political unit of 'Northern Ireland' consists of 6 of the 9 counties of the Province of Ulster, one of the four provinces of Ireland. It has a Parliament and a Government with limited powers, subordinate to the control of the Parliament of the United Kingdom at Westminster. Financially, it is heavily subsidised by the British Government.

² The population of Ireland as a whole is 4,368,777. Of this total population 2,884,002 are in the Republic of Ireland and 1,484,775 are in Northern Ireland. The area of the Republic is 70,280 km.²; that of Northern Ireland is 14,146 km.².

³ The birth rate in Northern Ireland at 22.4 per 1,000 is much higher than that of England and Wales which is 17.2 per 1,000. While no statistical breakdown is available showing the birth rate on denominational lines, it is probable that the birth rate among the Roman Catholic population is high.

One Man — One Vote

There are *three* separate electoral registers maintained. One for elections to the British Parliament in London where twelve members from Northern Ireland sit, one for electors to the Northern Ireland Parliament and one for Local Government elections. While there are some slight differences in regard to the 'residence' qualifications between the British Electoral Laws and those of Northern Ireland applicable to elections to the United Kingdom Parliament at Westminster, these differences are not highly significant. The 'One Man One Vote' principle, however, is breached when it comes to the register of voters for elections to the Northern Ireland Parliament at Belfast and the register of voters for Local Government elections. There is a different register of electors entitled to vote in elections to the Northern Ireland Parliament; this register includes voters who, in addition to their one vote, are given additional votes by reason of property or university qualifications. In 1968 there were some 25,000 more voters on the register for the Northern Ireland Parliament than for the Westminster Parliament; this represents the extent of the plural voting in elections to the Belfast Parliament.

The real gravamen of the complaint of the Catholic minority is in regard to the Local Government elections and administration. 'The Campaign for Social Justice in Northern Ireland' claims that there are still a quarter of a million people, out of a total electorate of less than one million, who do not have a vote and that, among those who are privileged to be electors, many have the right to more than one vote.

In Local Government elections, voting rights depend on property qualifications, and the great majority of adults disenfranchised in this manner are Catholic. Even in areas where there is a majority of Catholic voters, the electoral areas are so designed as to produce a disproportionate balance by grouping large numbers of Catholics into some electoral units to enable other electoral areas to have Protestant majorities. This is known as Gerrymandering.¹ The 'company vote' was another factor used to negative the 'One Man One Vote' rule since limited companies above a certain valuation could control up to six votes in any one local electoral area. Few Catholics own limited companies.

The extent of this discrimination in regard to Local Government voting rights may be gauged from a comparison of the total electorate in Local Government elections and the total for the elections to the Westminster and Belfast parliaments. In 1967, only

¹ The word is derived from the name of the US politician Elbridge Gerry who was Governor of Massachusetts in 1812. At the time his party in the Legislature redistributed constituencies in the State so as to concentrate its strength and dissipate the strength of its opponents.

694,483 were entitled to vote in Local Government elections compared with 909,841 *electors* for Westminster and 933,724 *votes* for the Belfast Parliament. In addition to this disparity, account must be taken of the fact that the 694,483 Local Government electors comprise many who are given the privilege of exercising more than one vote.

Thus although the Catholic minority is almost 40% of the total population, the (Protestant) Unionist Party controls 57 out of the 68 Local Councils.

The right to free elections by universal and equal suffrage is so well recognised in the democratic world as not to need elaboration.¹ It clearly involves the principle of 'One Man One Vote'; it forbids *discrimination in any form*. Admittedly these elementary rules of democracy do not obtain in Northern Ireland.

Discrimination

Discrimination against Catholics exists not only in regard to housing but also in regard to work. In the first case, because of the property qualifications, houses mean votes and are thus a crucial political weapons. Although the situation changes from town to town and council to council, public building of houses in Catholic areas is notoriously slow. Catholic families have been known to wait as long as seventeen years for a house, while similar delays have not affected Protestants. Unemployment forces Catholics to emigrate. It is not by mere coincidence that Catholics are denied work while Protestants are accepted. Formerly actual government policy, the tradition is still actively discriminatory in practice.

Special Powers Act 1922

The Civil Authorities (Special Powers) Act has been the principal organ for suppression of opinion in Northern Ireland. It gives absolute powers to the Minister for Home Affairs to make pretty well whatever Regulations he wishes. The Act has been used to allow indefinite internment without charge or trial and the Act also gives powers to place persons under house arrest. This same Act makes it possible to commit an offence under the Act, although that offence has not been provided for in the Regulations. It is sufficient if the Court thinks that what has been done ought to be an offence.²

¹ Article 21(1) and (3) Universal Declaration of Human Rights; Article 3, First Protocol to the European Convention on Human Rights; Articles 25, 26 and 27 of the U.N. International Covenant on Civil and Political Rights.

² Section 2(4) of the Civil Authorities (Special Powers) Act 1922 provides: 'If any person does any act of such a nature as to be calculated to be prejudicial to the preservation of the peace or maintenance of order in Northern Ireland and not specifically provided for in the regulations, he shall be deemed to be guilty of an offence against the regulations.'

In addition, a special part-time police force, regarded as the militant arm of the Orange order (a political-religious society noted for its sectarianism) is mobilised from time to time and has all the authority under the Special Powers Act of the regular police force. The Special Powers Act and the 'B Specials' police force were nominally aimed at preventing crime and controlling the activities of the Irish Republican Army, the military force of the Irish liberation movement. In fact, they have been used to quell civil disturbances and it is feared that they will be used in the future to put down civil rights demonstrations. In February this year the Northern Ireland Cabinet approved the call-up of an indefinite number of this special force. By reason of its composition, the regular police force is itself mistrusted by the minority. The Special Powers Act of 1922 not only gives very wide powers to the police but enables the Minister of Home Affairs to delegate his powers to any officer of the police who can then be the 'civil authority'.¹

Reforms²

In November 1968 the Northern Ireland Government announced that it would undertake some reforms. As is usual in such situations, the question arises as to whether these reforms are adequate and will be put into operation sufficiently quickly to allay the existing distrust of the Government's intentions. It is unfortunate that the Government, while promising to review the Local Government franchise, stated that this would only be brought into effect by the end of 1971. Local elections are due to be held in April 1970. It might have restored confidence if this reform was put into effect in time for April 1970. It is also unfortunate that the programme of reforms announced did not envisage legislation to prevent discrimination in regard to employment and housing.

UK's International Responsibility

The United Kingdom is a party to the European Convention on the Protection of Human Rights and Fundamental Freedoms. It is also a signatory to the two UN Covenants on Human Rights. The provisions of the Special Powers Act and the policies of discrimination referred to are clearly incompatible with the United Kingdom's international obligations. Because of this, the United Kingdom Government was obliged in 1957 to notify the Council of Europe that a 'public emergency threatening the life of the nation' existed in Northern Ireland and that emergency powers were being utilised which might 'involve derogations in certain respects

¹ Civil Authorities (Special Powers) Act 1922 Sec. 1(2).

² The Belgian League for the Rights of Man sent an Observer Mission to Northern Ireland. For a more detailed study, readers are referred to their *Report on Civil and Social Rights in Northern Ireland*.

from the obligations imposed by the Convention for the Protection of Human Rights and Fundamental Freedoms'. It is unfortunate that the policies of the Northern Ireland Government and the reactions to them should place the UK Government in the invidious position of derogating from its international obligations.

Of course, it is still open for an aggrieved party to challenge the UK Notice of Derogation on the grounds that no 'public emergency threatening the life of the nation' exists in Northern Ireland or on the ground that the measures taken by the authorities are in excess of those 'strictly required by the exigencies of the situation'. The first of these grounds would raise the interesting question of whether the nation in this case is the 'United Kingdom of Great Britain and Northern Ireland', which is the State that is a party to the Convention, or 'Northern Ireland', which is only part of that State.

In any proceedings that might arise before the European Commission or Court of Human Rights, another fundamental question might well arise: if a Government by its own policies violates certain provisions of the Convention and thus contributes to the creation of a grave emergency, can it then rely on the 'derogation' clause of Article 15? This might well involve a construction in depth of Articles 14, 15, 17 and 18 of the Convention.

It is rather shocking that, in an area within the Council of Europe, there should have subsisted a state of public emergency which has forced the UK to derogate from its international obligations for over 12 years. This in itself gives a clear indication as to the need for very fundamental reforms in this small corner of Ireland. Legislation and conditions in Northern Ireland have been such a byword that they have been frequently cited by Ministers of the South African Government to justify their own policies of discrimination. Mr Vorster has self-righteously pointed out in the South African Parliament that the South African detention legislation is less draconian than the Northern Ireland Special Powers Act 1922. A recent South African Government publication¹ quotes extensively from the Special Powers Act 1922 and the Regulations made thereunder in justification of its own repressive legislation. This use of Northern Ireland legislation to justify apartheid policies in South Africa should of itself have drawn attention to the state of human rights in Northern Ireland.

¹ *South Africa and the Rule of Law*, published by the South African Department of Foreign Affairs, April 1968.

Revival of Spain's Terrorism Decree

The state of emergency ended in Spain on 25th March of this year. It had originally been declared for three months but was lifted after two. This is certainly encouraging¹ but any more favourable comment would unfortunately be premature. First, the state of emergency still remains in the Basque provinces. And second, the decision to end the general emergency could be made at no great cost. The Spanish authorities still have an arsenal of laws which deprive the individual of fundamental rights and elementary safeguards against arbitrary treatment. One of these laws—the 'Decree on Banditry and Terrorism'—is the main subject of this article.

The Decree on Banditry and Terrorism of 21st September 1960² had to a large extent been repealed by a Law of December 1963. It was brought fully into force again by a Legislative Decree of August 1968.³

Apart from its Sections 2 and 8 (to be dealt with later), the Decree of 1960 is a fairly acceptable and, one will assume, necessary piece of legislation. Section 2 however extends the crime of 'military rebellion' to cover a series of acts which have little to do with either military rebellion, banditry or terrorism.

Section 2, which is an almost word-for-word revival of a law of 1943 (passed in the wake of the Civil War), reads :

The following shall be considered guilty of military rebellion within the meaning of Section 286 (5) of the Military Code of Justice, and liable to the sentences provided for in that Code :⁴

1. Anyone who spreads false or tendentious news for the purpose of disturbing internal law and order, causing international conflicts or bringing into disrepute the State, its institutions, Government, army or authorities.
2. Anyone who in any way meets, conspires, or takes part in meetings, conferences or demonstrations having as their object those

¹ See the ICJ's criticism of the Declaration of Emergency contained in its Press Release of 19th February 1969.

² No. 1794/1960. See also *Spain and the Rule of Law*, published by the International Commission of Jurists in 1962.

³ Decreto-Ley No. 9/68 (Official Gazette No. 17).

⁴ Which can in certain circumstances entail the death penalty.

cited in the preceding paragraph. The following may also be considered acts of military rebellion: Walk-outs, strikes, sabotage and other similar acts, when they are carried out for political purposes or seriously disturb law and order.

Persons accused of the offences under the Decree are, by Section 8, liable to summary trial by court-martial:

The Military Court shall be competent to try the crimes mentioned in this Decree, which shall be judged by summary procedure.

If the particular circumstances are such that the acts committed lack the gravity or nature to make them subject to this Decree but subject only to ordinary law, the military courts may waive their jurisdiction in favour of the ordinary courts.¹

The accused is not represented by a lawyer in the summary proceedings provided for, and at no time has he access to one. He is defended by an army officer (who probably will have had no legal training). The officer is allowed 'four hours,² after a compulsory interview with the accused' to draw up his written defence (s. 927 of the Military Code of Justice). Whether the military courts will waive their jurisdiction under section 8 depends upon their *subjective* appreciation of the case; and the exercise of their absolute discretion in this respect cannot be challenged in the ordinary courts. Moreover there is no appeal against an erroneous decision.³

On account of the two provisions set out above, the Decree is objectionable from a procedural point of view, objectionable in its substance, and as a whole objectionable in principle.

Procedural Objection to the Decree

The objection here is that the Decree causes a confusion of laws and jurisdictions. The same political and social offences are defined and punished differently under (1) the Criminal Code, (2) the Military Code of Justice and (3) the Act on Law and Order, 1959. One of the reasons for the Decree's amendment in December 1963 was that a person accused, for instance, of distributing a pamphlet criticising the Spanish regime or labour conditions would be subject to trial in three different courts applying three different laws. The courts were (1) the ordinary criminal courts, (2) the court for the suppression of freemasonry and communism and (3) a

¹ The 'Ordinary Courts' are in fact the Courts of Law and Order applying the Criminal Code and the 'Act on Law and Order' of 1959.

² The preparation of the prosecution's case is also limited to four hours.

³ The Military Code provides however (s. 954) for the revision of a decision if, for instance, fresh facts come to light or if the prosecution evidence is held in a later case to have been perjured or a confession obtained under duress.

court-martial on the basis of the 1960 Decree. The Law of 1963 created a 'Court of Law and Order', which took over the jurisdictions of the three courts. With the re-entry into force of the 1960 Decree, this confusion is creeping back. The position could be made much worse if a state of emergency or war were declared, in which case a host of special courts could be set up under Chapter V of the Act on Law and Order, 1959.

The Substance of the Decree

The Decree is objectionable in substance in that it violates the elementary principle of law recognised in Article 11 (2) of the Universal Declaration of Human Rights, which is expressed by the maxim, *nullum crimen sine lege*; for Section 2 classifies as acts of military rebellion 'walk-outs, strikes, sabotage and other similar acts, when they are carried out for political purposes . . . '.

Such an application of the criminal law by analogy is also incompatible with Spanish law. The Supreme Court has ruled that 'in criminal matters, the scope of criminal provisions may not be extended to cases not provided for in the legislation itself' (Decisions of 3rd May 1922 and 14th December 1960) and that 'the criminal law does not permit interpretation by analogy' (Decision of 22nd June 1934).

Article 2 (1) of the Criminal Code moreover provides :

When a court has cognisance of an act that it considers ought to be made criminal but is not punishable by law, it shall not take any action in the matter but shall inform the Government of the reasons why it believes that such an act should be sanctioned.

Incidentally, the 1960 Decree is not the first example of the creation of an offence by analogy. Section 2 of the Act of Law and Order 1959 extends the acts it proscribes to 'those that in any other way not provided for in the Act on Law and Order infringe its provisions'.

Not only are offences determined by analogy but also offenders. A Legislative Decree of 22nd March 1957, adding section 268 *bis* to the Criminal Code, provides :

When in the commission of collective offences . . . no persons responsible for instigating, organizing or directing them are identifiable and there is no special rule for establishing responsibility, the most representative among the accused shall in each case be regarded as responsible and, other conditions being equal, the oldest. The most representative shall be those who act as leaders or representatives or, in the absence thereof, *those whose conduct and records, in the opinion of the court, bear the closest relation to the nature and circumstances of the act committed.*

The Decree as a Whole

The Decree as a whole is offensive. It treats political offenders as ordinary bandits and makes them guilty of the irrelevant crime of military rebellion. Its drafting is so loose as to demand the narrowest construction. This cannot be expected from a military court, where persons accused of political offences are—necessarily—summarily defended in summary proceedings in which only army officers take part.

If the court-martial chooses to waive its jurisdiction, the accused will at least benefit from a trial in the Court of Law and Order before civilian judges, where he will have legal representation. But even here there are disturbing aspects. Section 9 of the 1963 Act setting up the Court of Law and Order provides that in certain circumstances the accused may, before trial, be held on remand for the entire duration of the sentence applicable to the crime of which he is accused, (and of which he may later be acquitted). The least that can be said is that the presumption of innocence recognised in Article 11 (1) of the Universal Declaration seems to have gone astray.

A dangerous toy in any hands, the Decree on Banditry and Terrorism can be effectively used by the military courts to ensure that any who exercise their fundamental right of freedom of opinion and expression are treated like common criminals.

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Thailand Returns to Parliamentary Democracy

On 10th February 1969, after more than a decade of military rule, the people of Thailand went to the polls to elect parliamentary representatives under the country's new Constitution, promulgated on 21st June 1968.

For the last thirty-six years Thailand has been under a limited monarchy; but during this period the country has had as many as seven successful military coups, eight constitutions and fifteen governments. Since 20th October 1953, when the late Field Marshal Sarit Thanarat seized power and banned political parties and labour unions, the country had been ruled under relatively restrained martial law.

Political Re-awakening

The promulgation of the long-awaited new Constitution had the effect of resuscitating dormant political parties and of giving an impetus to political activity in general. New politicians emerged, small political parties and groups coalesced in preparation for the elections, and the Thai press grew bolder in issues which earlier it would hardly have dared to discuss.

Principal Features of the New Constitution

Despite much enthusiasm over 'the return of democracy', the new Constitution, which is the product of six years' discussion, enables only a limited form of popular rule. Like the earlier Constitution of 1949, it provides for a bi-cameral legislature composed of a House of Representatives elected on the basis of universal franchise and a Senate appointed by the King. It provides for one elected member to the House of Representatives for every 150,000 people, with each province receiving at least one representative regardless of population, and envisages in this way a 219-member Lower House. The Senate or Upper House is to consist of 154 appointed members, who are at least 40 years of age and 'are qualified in technical and in various other affairs which will benefit

national administration'. Although the Lower House is to be the dominant body, particularly in matters relating to finance, certain important matters can be decided by 'joint sittings' of Parliament; the Senate can in this way exercise considerable influence. The Senate has power to delay ordinary legislation for a period of one year and money bills for thirty days.

The Prime-Minister and the Cabinet are appointed by the King, but the Constitution is silent as to the basis for their selection. There is no requirement that any proportion of the Cabinet should be selected from the elected House of Representatives. As the Constitution precludes members of the Executive from holding seats in either House, the King is free to appoint his entire Cabinet from among persons who have not been elected by popular vote. The Cabinet is, however, responsible to Parliament and can be removed by a vote of no-confidence passed at a joint sitting of both Houses.

Protection of Rights and Liberties

The Constitution includes provisions for protecting the 'rights and liberties' of the people, including the freedoms of religion, speech, assembly and association. It protects the right to property and sanctions free political parties. Most civil and political rights can, however, be restricted by a 'special law' safeguarding morals and public order. Thus, freedom of assembly can be restricted by a special law governing the right of access to public places or designed to maintain public order during a time of national emergency. The Constitution also includes a list of 'directive principles of State policy' intended to guide legislation and administration towards, *inter alia*, world peace, national security, free primary education, private enterprise, social welfare and public health.

The Elections of February 1969

After several amalgamations, nine political parties applied for official recognition and started campaigning for the general elections of February 1969. Prime-Minister Thanom Kittikachorn's Government party—the hastily constructed United Thai People's Party—was quite confident of victory and stressed in its campaign its good economic record and the importance it would pay to national development. Its principal rival, the Democratic Party led by Seni Premoj, himself a staunch Royalist and a former Prime-Minister, criticized corruption in the Government, administrative inefficiency and lack of rural development. His party also sought to make the Cabinet more directly responsible to the elected representatives, as was the case under the 1949 Constitution. In September 1968, the Democratic Party scored an unexpected electoral victory over

Government candidates in the Bangkok Municipal Council election by winning as many as 22 out of 24 seats. This landslide in favour of the Democratic Party brought new prestige to it and made Government leaders take the forthcoming general elections more seriously.

In the general election the Government's United Thai People's Party won 75 seats in the 219-member House of Representatives while the Democratic Party, its closest rival, swept all the seats in the Bangkok Thonburi area to win 56 seats in all. Of the other 88 seats, 72 went to independents and the balance to candidates of five smaller parties.

There were allegations that the United Thai People's Party had been buying votes in certain areas, but it could in general be said that the elections were fairly cleanly fought. In fact, the Government had little need to rig the elections, as the UTPP had the necessary funds, the organization and, most important of all, the full backing of the regime in power. It was thus in a position to attract a large number of persons of influence to stand as its candidates. In a society where personalities continue to count more than political programmes, this was a distinct advantage.

Guerrilla Activities of Pro-Peking Communist Party

The only violent opposition to the return of parliamentary government in Thailand came from her pro-Peking Communist Party, which has over the last year been intensifying its guerrilla activities with the object of disrupting the Government. The guerrillas, who consist largely of the Meo, a nomadic tribe originating from the Yunnan in China, operate under Communist leadership in the remote mountainous areas adjoining the Burmese and Laotian borders. There have also been attacks by Chinese insurgents from the Malayan Communist Party on Government outposts along the Thai-Malaysian border. These activities are continuing to cause the Government considerable anxiety. Shortly after the elections, King Bhumibol of Thailand had occasion to rebuke his new Cabinet for mishandling Communist-led guerrilla activities, which he said had now grown into a jungle war. He issued a warning that these activities foreshadowed incessant trouble, unless firm and effective measures were taken to counteract them.

Assessment of New Constitution

The effect of the general election has been to give a civilian and more representative character to the military regime of Field-Marshal Thanom. The 57-year old Premier did not have much trouble in securing an easy working majority in the House of

Representatives, since he was able to count on the support of most of the 72 successful independent candidates. Many of the chief figures in the pre-election Cabinet continue in the new Cabinet although there have been some exchanges of portfolios and replacements.

Despite its main deficiencies, the new Constitution provides a good basis for further political advancement. It represents an attempt to build on the Thai political tradition rather than to imitate Western democratic models. Inasmuch as it provides for a strong executive, it enables the Government to protect national security, maintain stability and promote economic development. A strong executive will, it is true, necessarily influence the legislature. At the same time however, the House of Representatives, which is by far the more powerful of the two Houses, consists of elected representatives of the people and this will naturally serve as a check on unbridled executive power.

New Working Methods of the U.N. Human Rights Commission

The United Nations Commission on Human Rights held its 25th session from 17th February to 21st March 1969 at the *Palais des Nations*, Geneva, under the chairmanship of Mr. R. Q. Quentin-Baxter from New Zealand. It was the first session since the International Conference on Human Rights of Teheran held in 1968, International Human Rights Year; and the Commission's task was to undertake the implementation of the Teheran resolutions. This was the first opportunity when the new working methods, drawn up by an *ad hoc* working group and adopted in resolution 2 (XXV) of the Commission, could be applied. These methods aim at establishing 'a proper balance between the different types of matters' referred to the Commission year after year, in order that it may 'discharge fully and rapidly the important tasks assigned to it'. Under the new methods agenda items are grouped together and considered more systematically so as to avoid, wherever possible, reiterating problems and standpoints during the discussions.

The able use made of the working methods by the Chairman and the Secretariat allowed the Commission to take a stand on a number of important questions and to adopt a series of resolutions relating in particular to the extension of its powers, measures for combating racial discrimination, the punishment of war criminals, the realisation of economic, social and cultural rights, the role of

youth in the promotion of human rights and studies conducted or proposed by its Sub-Commission on Prevention of Discrimination and Protection of Minorities.

However, the discussions—more political than legal—on the two issues of the day, Southern Africa and the Middle East, took up a disproportionate part of the five-week period. Consequently, despite laudable efforts to make up for lost time, even in night sessions, the proper balance between the different types of subjects was not achieved. As has happened in the past, several items were never discussed and had to be postponed to future sessions. Yet the 25th session did produce valuable and concrete results, which may open new vistas for the international protection of human rights.

1. Extension of the Powers of the Commission

The powers of the Commission have been recently extended: in 1967 it was asked to investigate violations of human rights in South Africa. The present session enlarged the powers of the working group entrusted with this investigation. The same working group was also given a mandate to investigate alleged violations of human rights in territories occupied by Israel. Recalling a resolution of the Teheran Conference, the Commission further decided to prepare *model rules of procedure* for this working group and for other *ad hoc* bodies of the United Nations entrusted with the study of particular situations alleged to reveal a consistent pattern of violations of human rights.¹ Thus for the first time United Nations organs will have rules of procedure to deal with specific cases of violations. The resolution represents an important step towards the establishment of international machinery for the protection of human rights.

The Commission adopted, at the suggestion of its Sub-Commission, a draft resolution to be submitted to the Economic and Social Council authorizing the Sub-Commission to examine communications to it according to a specified procedure, which was set out in detail. This proposal offers a new potential to the Sub-Commission and also the Commission itself in relation to the examination of complaints from individuals in the human rights field. The United Nations has at present no procedure for the detailed examination of individual complaints.

During Human Rights Year 1968, several proposals were submitted officially and unofficially tending to reinforce the position of the Commission in the United Nations structure.² The relevant

¹ Resolution 8 (XXV).

² See John Humphrey: 'Human Rights, the United Nations and 1968', *Journal of the International Commission of Jurists*, Vol. IX, No. 1, pp. 1-4. See also *Final Act of the International Conference on Human Rights, Teheran, 1968, Annex V*, p. 46.

resolutions of the present session enabled some progress to be made in that direction. The decision was taken to continue to meet annually for a period of not less than four and not more than six weeks and to maintain the summary records of meetings. The Sub-Commission will meet at least once a year for three weeks and keep summary records. These provisions grant these two organs a privileged status since the other operational commissions of the United Nations only meet every two years for budgetary reasons and have abandoned the summary records system.

2. Periodic Examination of Questions within the Competence of the Commission

The Commission devoted three meetings to the examination of the periodic reports on civil and political rights for the period 1965-1968 submitted by 29 Member States, several specialized agencies and non-governmental (international) organisations among which was the International Commission of Jurists.¹ These reports had already been examined by an *ad hoc* committee of the Commission that had also submitted a draft resolution. This draft was finally adopted unanimously. The discussions did not touch on the fundamental issues because arguments between the delegates of the United Arab Republic and of Israel took up nearly all the available time. Resolution 22 (XXV) urges those Governments which have not yet submitted their reports on civil and political rights (there are over a hundred of them) to do so at the earliest opportunity and to submit reports on economic, social and cultural rights for the period 1966-1969 at the latest by 30th November 1969.

The Commission also examined the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.² In several resolutions it approved the decisions of the Sub-Commission to undertake several studies on the questions of the protection of minorities and the crime of genocide and appointed Special Rapporteurs for this purpose. The Commission confirmed the appointment of a third Special Rapporteur for the study on slavery. Unfortunately, several items of the Sub-Commission's report could not be examined for lack of time. The studies on discrimination in the matter of political rights, of discrimination in respect of the right of everyone to leave any country, including his own, and of discrimination against persons born out of wedlock were deferred to the next session. Two other studies completed by the Sub-Commission—on arbitrary detention and the right of arrested persons to have a proper defence—will be considered at the 27th Session in two years' time.

¹ E/CN.4/L.1090/Add.10.

² Report of the Sub-Commission E/CN.4/976, Resolutions 18-19 (XXV).

The list of other items postponed includes communications concerning human rights, the question of establishing national and regional human rights commissions as well as the large file which the Teheran Conference was unable to deal with and which it had transmitted to the Commission. At the end of the session the Commission elected the 26 members of its Sub-Commission for the next three years.

3. Current problems concerning Human Rights

In the field of racial discrimination the Special Rapporteur of the Commission, Mr Manouchehr Ganji (Iran), presented his second report,¹ in which he brought up to date the information contained in his last year's report on development in the human rights situation in South Africa, Namibia and Southern Rhodesia. The Commission endorsed the Conclusions and Recommendations of the Rapporteur, and requested him to pursue his task and to submit a new report next year covering additional points. Among the proposals of the Special Rapporteur, that of establishing a Judicial Committee for Namibia deserves special mention. The proposal was that the General Assembly should establish a Commission of six to nine eminent jurists in order to detect, denounce and repress crimes committed against the inhabitants of the territory of Namibia and to establish who was responsible for them.

The Commission then studied the report of its *ad hoc* working group of experts asked to investigate allegations of torture and ill-treatment of prisoners in Southern Africa. A draft resolution was discussed which would have called upon the Governments concerned to repeal certain legislation considered contrary to human rights, to ensure the application of the Standard Minimum Rules for the Treatment of Prisoners adopted in 1955 by the United Nations and the 1949 Geneva Convention relative to the Treatment of Prisoners of War and to release and indemnify the Namibians held prisoner in Namibia and South Africa. The draft proposed furthermore that the Secretary-General should establish and maintain an up-to-date register of political prisoners and detainees as well as captured freedom fighters held anywhere in Southern Africa. For lack of time and of agreement on the several issues, the Commission remitted the draft for discussion to the Economic and Social Council and adopted a more limited resolution extending and enlarging the mandate of the *ad hoc* working group.²

Under the heading 'Situations which reveal a consistent pattern of violation of human rights', the Commission considered two draft resolutions concerning human rights in the territories occupied by

¹ Report : E/CN.4/979 and Add. 1-8, Resolution 5 (XXV).

² Report of the *ad hoc* Working Group of Experts : (E/CN.4/984 and Add. 1-19), Debates : E/CN.4/L.1090/Add.3. Resolution 21 (XXV).

Israel as a result of hostilities in the Middle East. The first, which was adopted as Resolution 6 (XXV), expresses deep concern over the reported continuation of human rights violations as well as of violations of the Geneva Conventions and decides to establish a special Working Group of Experts—composed of the members of the working group referred to above—to investigate allegations concerning Israel's violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

The second draft was adopted as Resolution 7 (XXV). It makes a fervent appeal to all Governments, their peoples and world public opinion, to ensure a peaceful settlement of the conflict affecting the Middle East.

The Commission decided to resume discussions on the question of the punishment of war criminals and of persons who have committed crimes against humanity at its next session on the basis of more detailed information. During the discussions the need to establish an International Criminal Court was reiterated.

In a resolution, the draft of which was substantially amended, the Commission renewed its condemnation of all forms of racial intolerance, nazism including its present-day manifestations, and 'all other totalitarian ideologies and practices' (Resolution 10 (XXV)).

Among the current problems, the Commission examined for the first time since it drafted the International Covenant on Economic, Social and Cultural Rights in the early 1950's the economic problems of human rights and the implementation of the Covenant in this respect.

Considering that these problems should receive increasing attention in the activities of the United Nations, the Commission decided to undertake a study of the realization of these rights and appointed Mr Manouchehr Ganji of Iran Special Rapporteur to establish a comprehensive report on the matter.

In the field of social development the Commission took a firm stand. Recalling Article 28 of the Universal Declaration, it urged all Member States to take, on the threshold of the Second Development Decade, convergent measures designed to *transform international economic relations* so as to ensure an equitable international division of labour *different from that existing at present*.

The problem of unrest among youth everywhere in the world was discussed. Several speakers saw a common factor here, which was the desire of young people to take a greater part in public affairs at the national and international levels. They stressed the effective contribution that young people could make to the promotion of human rights. For the Commission, the moment appeared particularly opportune for engaging the attention of youth and channelling its action. The measures proposed in resolution 20 (XXV) aim at dispelling ignorance in regard to human rights by extensive education at all levels.

The Commission, in conclusion then, achieved substantial results ; but in spite of the new working methods, the list of items postponed is a long one. Time became short essentially because of the disproportionate treatment given to the two current issues, South Africa and the Middle East, to the prejudice of the ordinary agenda items. Not only was the desired balance in the organisation of the Commission's work upset, but there was also a further disproportion in that systematic and flagrant violations elsewhere in the world were not discussed at all. This is likely to create the impression that the Commission does not use the same yardstick in examining violations and that it exercises a certain discrimination according to regional or world politics.

When the new working methods are combined with a real effort to replace political controversy by legal discussion, the balance, the universality and the effectiveness of the UN Human Rights Commission will stand out clearly.

Shri Purshottam Trikandas

It is with profound regret that the International Commission of Jurists has learnt of the death of Mr Purshottam Trikandas of New Delhi, India. Mr Trikandas was one of the oldest members of the Commission, having been closely associated with it almost from the time of its inception in 1952. Beginning with the Congress of Athens in 1955, he participated in almost every important Congress and Conference of the Commission.

He was the General Secretary of the Indian Commission of Jurists from its foundation until his death and it was under his guidance and encouragement that the many branches of the Indian Commission were formed.

He was a Senior Advocate of the Supreme Court of India and enjoyed a large practice at the Bar. He had also functioned as Secretary of the Indian Bar Association and as a Member of the Executive Council of the Indian Law Institute. In the political field, he had been at one time Secretary of Mahatma Gandhi and later Chairman of the Socialist Party of India. He had also been a member of the Indian Delegation to the United Nations General Assembly.

With his death the Commission has lost one of its most ardent supporters in Asia and an indefatigable crusader for the Rule of Law.

We extend to his sorrowing widow and his only daughter our deepest sympathy in their sad bereavement.

Special Study

**CAPITAL PUNISHMENT
IN THE SECOND HALF
OF THE TWENTIETH CENTURY**

by

MARC ANCEL *

The hangings in Baghdad early this year have reminded a shocked world that the old problem of capital punishment—all but dismissed at the beginning of the century as a mere academic controversy—is still a stark reality. Everyone—and particularly jurists—can only look with anguish upon the existence of the death penalty and wonder what possible value it can have today.

It is not surprising that the United Nations Conference to be held at Kyoto in 1970 has included the question in its agenda. Since 1949, when a Royal Commission was set up in Great Britain to examine it, the problem of capital punishment has taken on a new dimension: studies, national and international seminars, individual action and demonstrations have followed one another in close succession. And with the commemoration of the Universal Declaration of Human Rights, it has been thrust, in all its acuteness, before the conscience of men living in the second half of the twentieth century. The sole purpose of this study is to put the humanist's point of view.

It is impossible to review or even recapitulate here all the major efforts that have been devoted to the question by criminal lawyers and legislators, criminologists and penologists. Suffice it to say that in recent years, the movement for abolition has gained ground. Legislation has been enacted: in 1965, Great Britain abolished the death penalty for capital murder, for a 'trial period' of five years, and reforms have been made in other countries as well, the United States and Ireland in particular. Eminent men have taken up the cause and proposed reforms: a remarkable example is the statement made to the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee by the United States Attorney General,

* Divisional President, French Court of Cassation; President of the International Society of Social Defence.

Ramsey Clark, on 2nd July 1968, proposing the abolition of the death penalty. Meetings of experts have taken a stand: at the seminar held at Coimbra in September 1967 to celebrate the hundredth anniversary of the abolition of the death penalty in Portugal, a resolution condemning capital punishment was unanimously approved, even by those who, in their preparatory reports or during the debates, had tried to uphold the anti-abolitionist thesis.¹ It is also significant that the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders examined the problem again during its meeting at Geneva in August 1968 and adopted resolutions recommending moderation.² The stand taken by the Human Rights Committee for its part was clearly in favour of abolition.

The old problem, then, is being tackled afresh from two new approaches: social rehabilitation, which is what the efforts devoted to the prevention of crime and the treatment of offenders now aim at, and respect and protection for the individual, which is what human rights mean. I shall make this clearer by tracing the way in which the attitudes towards capital punishment have developed—and fluctuated—since the beginning of this century, before trying to take stock of the question as it now stands.

I

In 1900, capital punishment seemed to be, as the eminent Belgian criminologist, Adolphe Prins, thought, a relic of the past soon destined to disappear. The abolitionist controversy even seemed to be exhausted: since Beccaria, everything had been said and there was no further need of the lyricism of Victor Hugo or Lamartine, of the rigorous arguments of Charles Lucas, Mittermaier or Olivecrona, or of the dogmatism of Carrara in order to protest against the scaffold or the gallows. Despite a few reactions here and there, penologists had taken due note that capital punishment would disappear. And yet the twentieth century was soon to witness a swing back to anti-abolitionism.

At least three currents moved in that direction. The first was a scientific current, particularly influential in an age with a passion for science and indeed, at times, a failing for 'scientism'. At the end of the nineteenth century, the Italian anthropological and sociological school had developed the two notions that some men are born criminal and that society must be protected by eliminating dangerous criminals. It even claimed that a process of scientific selection, linked with Darwin's theories, was involved. The then

¹ The Papers submitted to the Seminar have been published by the Law Faculty, Coimbra, in their original languages, under the title, *Pena de Morte* (2 vols).

² The relevant part of the Consultative Group's Report is reproduced on pp. 42-48 below.

incipient science of criminal typology attempted to define the categories of constitutional evil-doers, then antisocial individuals, and soon 'social monsters'—whom society, because of its right of self-defence, was entitled to eradicate. Enrico Ferri ruled out capital punishment solely because it could be effective only if thousands of executions were made, something that modern society would no longer accept. Lombroso, with some hesitation, and Garofalo, with none, recommended its use as salutary, and even such a humane criminologist as Gabriel Tarde tried to rationalise its need. The new school of criminology thus unexpectedly came to the aid of the advocates of capital punishment.

A second current, partly but avidly based on the scientific current, may be described as social conservatism. Criminality, especially habitual criminality, had increased considerably at the end of the nineteenth century. The violent anarchy of those years was regarded as a dangerous threat to the established order. At the turn of the century, the French public, worried about the new forms of delinquency typified by the hooligans known as *apaches* and soon after by the 'Bonnot gang', demanded merciless repression. As a result, the attempts to abolish capital punishment, by legislation or by the systematic use of the presidential pardon, failed. The bourgeoisie of the *belle époque* sought protection and, by an instinctive reflex—if not a complex—of self-defence, it could feel protected only if capital punishment was established and enforced.

The third was an authoritarian current, which had a profound influence on the first half of the twentieth century. Sociologically, this influence first made itself felt as a result of the first World War which, by dispelling the euphoria of the early years of the century and confounding the tendencies of liberal criminal law up to then, led all the belligerent countries—and some others as well—to tighten repression. Should spies and traitors, after all, be given quarter? And when the innocent were sent to the slaughter, should out-and-out criminals still be spared? At first somewhat diffuse, these attitudes were strengthened with the return of peace (which logically might have seen them disappear), but now they had the force of ideology. In Italy—where the abolitionist movement had had its most fertile ground, from Beccaria and Leopold II of Tuscany to Carrara and Zanardelli—Mussolini's fascist regime re-established the death penalty and, of course, first of all for political offences. In the USSR, the movement brought about by the October Revolution, which was hardly an 'authoritarian' movement as that term is understood in the West but was certainly not a 'liberal' one either, did away with capital punishment at the outset only to re-establish it under Stalin, and enforce it on a vast scale, with notorious results. And it is surely unnecessary to recall the use to which it was put by National Socialism when Europe was under its heel.

Nevertheless, just before or just after the first World War, the abolitionist movement, while encountering new adversaries, remained alive and active. The Europe that took shape at Versailles, whatever its defects or shortcomings, was determined to be liberal and urged moderation in punishment. Abolition was introduced unconditionally in the Scandinavian countries, the Netherlands, Belgium and Austria. Certain socio-political events—and court decisions—worked to the advantage of the abolitionists. As a result of the controversy and emotion aroused by the execution of Sacco and Vanzetti in the United States in 1927, a Council for the Abolition of the Death Penalty was set up in Massachusetts. The publication the same year of *Capital Punishment in the Twentieth Century* by Roy Calvert, a major advocate of abolition, created so great a stir that two years later Great Britain set up a Select Committee, which *even at that time* proposed that the death penalty should be abolished, experimentally, for a five-year period. And the generous action carried out by the Howard League in this field is well known.

The second World War, even less than the first, did not help to further the abolitionist cause. Ruthless by nature, 'total war' allows the State every possible means of coercion. Capital executions then become current practice. When the hostilities are over, countries resolutely opposed to the death penalty may even re-establish it—or allow it to be used again—for punishing 'collaborators' or 'antisocial individuals'. In the countries liberated from the Nazi occupation, the public demanded the death sentence for the oppressors and their accomplices. The new notions of the war criminal and of crimes against humanity seemed to call for the supreme punishment: and the Nuremberg Tribunal delivered spectacular death sentences. Everywhere the attempt to introduce or strengthen economic and social planning by the State led to a disproportionate increase in penalties: in France, a law enacted in 1946 (but never enforced) went so far as to *prescribe the death penalty for certain 'crimes' relating to food supplies.*

At mid-century, then, there were two movements. On the one side, the death penalty—and this is an undeniable sociological fact—won back some of the ground it had lost during the nineteenth century, when the efforts of such men as Sir Samuel Romilly were aimed essentially at reducing the scope of capital punishment and limiting it to the most serious cases of wilful homicide. At the same time, liberal criminal law in Europe, as in Latin America, had excluded the death penalty for political crimes. Here, the volte-face was complete, though political crimes now were often made to appear as crimes under ordinary law or military offences. A State—or Government—seeking to consolidate its strength looks for legal means of annihilating its enemies. The State as its own justification, lese-majesty, special courts—everything that men fought against in 1789—reappear. The death penalty is no longer solely

the punishment for having taken the life of an individual, and totalitarianism thus puts the clock back. For certain countries, moreover, the economic order is equated with the political order. In the USSR under Stalin, sabotage was assimilated to treason; and although the Soviet Code of 1960 maintains capital punishment only provisionally for exceptional cases, subsequent laws, some made retroactive, have introduced it for illegal traffic in foreign currency. This movement, lastly, finds new fuel in what American sociologists call 'panic legislation': by holding out the threat of the severest punishment, the law tries to reassure public opinion alarmed by certain acute and contagious forms of criminality, such as gangsterism, the use of motorcars equipped with fire-arms, kidnapping, and hooliganism. It then becomes almost normal to resort to the death penalty.

The same period, however, produced an abolitionist reaction. Excessive evil sometimes brings about its own remedy, and the abuse of capital punishment, before and after the last war, back-lashed. The death penalty disappeared with the authoritarian regimes that had imposed or abused it—in Italy, Austria and Federal Germany. The Universal Declaration of Human Rights proclaimed the right to life and respect of the human person. In 1947, the first International Congress of Social Defence called for the abolition of a penalty incompatible with the demands—and the spirit—of modern penal policy. In 1948, the United Nations assumed the leadership in the 'prevention of crime and treatment of offenders', a phrase which in itself excludes measures of brutal elimination. During the debates, especially those of the Fourteenth Session of the General Assembly (1959), that led to the decision to carry out an inquiry on capital punishment, there was virtually no one who spoke up in its defence. There is no need to refer again to the legislative, intellectual and scientific movement mentioned at the beginning of this study. The problem of the death penalty, i.e. of its abolition or retention, has been laid directly before the conscience of men in the second half of the twentieth century: but in different circumstances and a different climate from those existing in the last century or even at the beginning of this century. It is in the light of the new circumstances and climate that an attempt will now be made to reply briefly to the two fundamental questions: what point have we now reached and what does the future hold in store?

II

Rather than reverting to the terms of the old controversy, I shall simply note a few facts as they have now emerged. First of all, the controversy has not been settled either by events, by legislation, or by changing ideas. The death penalty has not simply disappeared,

as might have been expected in 1900. It has even picked up some new momentum, and the legal systems set up since the second World War still give it ample room: this is true of criminal law in the people's democracies, in the Middle-East countries now being reorganized (except Israel, which has links with the legal systems of the West), and in the ex-colonial countries of Africa and Asia. Political events, revolutions, rebellions, coups d'état, international tension, and wars—whether called by their own name or another—still cry out for violence of every kind. The shape that the 'geography of capital punishment' is now taking seems to be to the detriment of the abolitionist movement, despite a few outstanding successes. Practically the only areas in the world definitely conquered by abolition are Western Europe—with the exception of Spain, France, Greece, and Turkey—and Latin America (except for a few passing setbacks). At the same time, it should be noted that in recent years the Anglo-American system has been moving steadily towards abolition.

A second fact is that, again contrary to what was thought in 1900 or even 1930, little decisive evidence has been supplied by criminology that would help to settle the controversy. Abolitionists and 'retentionists' continue to throw statistics at each other. Doubtless, as Mr Thorsten Sellin has admirably demonstrated, a scientific study of crime rates and trends shows that the abolition, or the re-establishment, of capital punishment in a country has never led to an abrupt and appreciable rise (or fall) in criminality. This is a strong argument for the abolitionists. The figures themselves, however, must be interpreted with care because of the conditions peculiar to each country, the forms and trends of delinquency, and the nature, make-up and action of the bodies responsible for investigation, prosecution and punishment under each system. Much remains to be done here in the field of comparative empirical research. Nor have the criminal sciences yet yielded definite data that could serve as an unquestioned basis for legislative reforms in the classification of delinquents or perpetrators of capital crimes, the biopsychic study of convicts, or the notions of abnormality, mental disorders, dangerousness and different (and conflicting) cultural levels—in short, in the etiology of capital offences. The very most that can be said—and that much is encouraging—is that the notions of the constitutional evil-doer and the social monster—those offspring of Lombroso's born criminal that still seduced many clear minds at the beginning of the century—have been abandoned. Besides, the use made by National Socialism of such notions—admittedly, warped from their original meaning—for justifying sterilization, the death sentence and the extermination of thousands of human beings would be reason enough to discard them.

A third—and this time a clearly positive—fact is the present character of capital punishment where it is actually enforced and

the position of those who advocate its maintenance. These two aspects are extremely significant.

First, the death sentence is now maintained only as an exceptional, temporary or limited measure. Although apparently it is not seriously questioned in many new countries of Africa and Asia and at times, as in Iraq recently, is even used in an ostentatious and challenging manner, everywhere else it is carried out almost clandestinely. The countries of Eastern Europe, especially the Soviet Union in its reforms of 1958-1960 and Yugoslavia in its 1959 revision of the 1950 Criminal Code, claim that it has been maintained only for exceptional cases, pending final abolition. In those countries of Europe—including Eastern Europe—and of America where it is still in force, it is applied less and less, and there is a constant and significant decrease in the number of capital sentences and executions. In all advanced countries, executions are no longer public; and it is forbidden to report and at times even to mention them. It all takes place as if the State, even while claiming it is obliged to put a criminal to death, were secretly ashamed of the act.

A detailed account cannot be given here of the various means used to reduce the actual application of capital punishment. But it should be noted that owing to criminal legislation, the administration of criminal law (and procedure), administrative policy and governmental action (particularly the use of pardon), which have reduced the number of sentences actually executed by 50 to 80 per cent according to the country, the death penalty—both its sentence and its execution—is now a quantitatively insignificant exception among the penalties in force. Thus the sociological reality of capital punishment is gradually approaching the point when it will virtually disappear in practice.

What, then, is capital punishment today? One must boldly reply that it is a principle, if not merely a symbol. This will make it possible to understand the position of its present advocates. These are becoming rare, and the cases for which they would retain capital punishment are also exceptional. Some writers do continue to assert that the death sentence is the only intimidating, the only expiatory, the only just punishment because an individual guilty of a capital crime must pay for it with his life. But the classical position, which was that of Beccaria's opponents and, during the nineteenth century, that of the staunch advocates of capital punishment, is gradually being abandoned. At meetings of experts, on the radio or television, or in public debates, those prepared to endorse the absolute maintenance of capital punishment are becoming increasingly scarce. Its advocates usually declare their agreement with a penal policy of abolition and content themselves with carrying on a rear-guard battle, in two different arenas.

The first is one of expediency and claims to reflect public opinion at large. The public, poorly informed, continues for the most part

to believe that the abolition of capital punishment would be followed by an immediate wave of violent crimes (in England and the United States, the police and prison warders often declare that they would be directly threatened by abolition and succeed in moving the man in the street to take their side). Since the average citizen seems to favour the maintenance of capital punishment, why take the risk of abolishing it?—so goes the argument at present. The abolitionists, moreover, note with satisfaction that it is gradually disappearing; the 'retentionists' do not contest its disappearance but, on the contrary, turn this into an argument: let it disappear in practice but keep it in the law.

Some advocates of capital punishment approach the question, more rashly, from the standpoint of human dignity and freedom. They no longer emphasize the old complaints, on behalf of the victim, that the criminal's survival would be an offence, since, as Plato pointed out, crime is a fact that cannot, as such, be erased; and the formula 'let the murderers be the first not to kill . . .' has worn thin. They claim that a capital criminal, fully responsible, has a kind of (natural?) right to the supreme punishment: he deserves it and, if he is a man, he will demand it; to deny him that punishment would be an affront to his superior nature as a human being. It is further argued, from a different but basically similar point of view, that a man who has chosen evil instead of good must suffer the retributive punishment, and that it would be an encroachment on his freedom, not to try to punish him, but to try to induce or force him, against his will, to be good. This argument would lead, from the ontological point of view, to the essential necessity of the death penalty.

These recent reactions of those who defend capital punishment bring me to my conclusion. The first position is nothing but the cautious and ostensibly reassuring reaffirmation of the old argument of expediency: it has not been definitely proved that the death penalty is useless. The answer to that argument is that it does not follow that it is necessary. And that is the whole question.

The other line of reasoning tries to combat abolitionism on the ground where it is now strongest: the protection of human rights. Apart from pathological cases of 'suicide by capital crime' (which are known to criminology, though there are not many examples) or of execution demanded and submitted to out of bravado (and by individuals therefore who are hardly the epitome of human dignity), there are few instances, with the exception of a few major political criminals, in which the accused does not try to avoid the death sentence or, once convicted, does not use every legal ground for appeal or solicit pardon. As for capital punishment as a sign (and guarantee?) of human freedom, this is nothing but the old affirmation of free will combined with the search for an absolute justice, which goes back to the ancient *lex talionis*. For, if the

guilty *must* be punished, does it necessarily follow that the punishment should be loss of life ?

It is here that modern science and humanism come forth with a decisive factor. As shown by the efforts which experts have devoted to the prevention of crime and the treatment of offenders, the notion of social rehabilitation or reintegration has replaced that of vengeance and expiation. Penology now aims at recovering and not at eliminating the criminal ; and if the crime must still be the subject of a value judgment, social censure, a sentence and even 'retribution', the anti-criminal reaction may not, in the modern view, exclude *a priori* the possibility of rehabilitation, the ways and means of which penitentiary experts are trying to determine.

It is not only a development, or even a transformation, of penology that has occurred here : it is the entire attitude to punishment as a necessary prop to the anti-criminal reaction that has changed. If the penal sentence is no longer designed solely to hit, as hard as possible, men who have outlawed themselves from the community and 'banished themselves from humanity', the death penalty loses its traditional basis. It loses it because, in the philosophy of human rights, the individual has the right not to be sacrificed to the general interest—the alleged general interest—of that community or to the requirements—the alleged requirements—of an absolute justice that that community is unable to render. The State, as the embodiment of organized society, does not have the right of life and death over those who constitute it and for the benefit of whom it is constituted. The wiping out of an individual existence can only be justified by precise and irrefutable reasons. The burden of proof in the abolitionist controversy today, viewed from the standpoint of human rights, must therefore rest with those who would maintain the death penalty in a system, under the Rule of Law, that naturally rejects it as contrary to its fundamental principles. The 'crusade against capital punishment' is certainly not over yet. During the past thirty years it has encountered new obstacles : but those who have taken up the crusade can also nourish new hopes, if the society in which we live escapes destruction and realizes its humanist aspirations.

ANNEX

The following is an extract from the Report of the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders (dated : Geneva, 6-16th August 1968. Sales No. : E.69.IV.3), to which Mr Ancel refers in his article at p. 34 above.

CAPITAL PUNISHMENT

125. General Assembly resolution 2334 (XXII) sought the views of the Consultative Group on the draft resolution submitted by the Economic and Social Council in its resolution 1243 (XLII). The General Assembly requested the Secretary-General to transmit the views of the Consultative Group on that draft resolution to the General Assembly at its twenty-third session.

126. The General Assembly, in the same resolution, had invited the Economic and Social Council to instruct the Commission on Human Rights to consider the draft resolution submitted by the Economic and Social Council in its resolution 1243 (XLII) and to transmit its views to the twenty-third session through the Council.

127. The Commission on Human Rights and the Economic and Social Council carried out these instructions by resolution 16 (XXIV) and resolution 1337 (XLIV), respectively. In the course of their deliberations, the draft resolution annexed to resolution 1243 (XLII), which had been submitted to the Economic and Social Council by Sweden and Venezuela, was somewhat modified. The final text, which was unanimously recommended to the General Assembly by the Economic and Social Council, had, however, the approval of the two sponsoring delegations ; the Consultative Group, at the request of the Swedish and Venezuelan delegates decided, therefore, to base its advice on the draft resolution, not on its original text but on the text which had received the approval of the Commission on Human Rights and of the Economic and Social Council.

128. The Consultative Group was assisted in its deliberations by a working paper prepared by the Secretariat (ST/SOA/SD/CG.2/WP.4) as well as by a background document, *Capital Punishment : Developments 1961 to 1965*.¹ The Consultative Group also took into consideration the report entitled *Capital Punishment*² and the commentary thereon by the *Ad Hoc* Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders.³

129. The Consultative Group decided that its recommendations would exclude reference to crimes against humanity, such as genocide, war crimes, crimes against peace, and similar crimes defined in international treaties and conventions even if they have been included in national legislation. The Consultative Group wished to be understood as in no

¹ United Nations publication, Sales No. : E.67.IV.15, part II.

² *Ibid.*, part I.

³ See *Official Records of the Economic and Social Council. Thirty-Fifth Session. Annexes*, agenda item 11, document E/3724, section III.

way dealing with existing international agreements and decisions, and national legislation on these matters.

130. The Consultative Group found itself in agreement with resolution 1337 (XLIV) of the Economic and Social Council and decided unanimously to recommend to the General Assembly that it should :

1. INVITE Governments of State Members of the United Nations :

(a) To ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases in countries where the death penalty obtains by providing, *inter alia* :

(i) That a person condemned to death shall not be deprived of the right to appeal to a higher judicial authority or to petition for pardon or reprieve, as the case may be ;

(ii) That a death sentence shall not be carried out until the procedures of appeal or of petition for pardon or reprieve have been terminated, as the case may be ;

(b) To consider whether the careful legal procedures and safeguards referred to under sub-paragraph (a) above may not be further strengthened by the fixing of a certain time-limit or time-limits before the expiry of which no death sentence shall be carried out, as has already been recognized in certain international conventions dealing with specific situations ;

(c) To inform the Secretary-General not later than 10 December 1970 of actions which may have been taken in accordance with sub-paragraph (a) above and of the results to which their consideration in accordance with sub-paragraph (b) above may have led ;

2. REQUEST the Secretary-General to invite Governments of States Members of the United Nations to inform him of their present attitude—with indication of the reasons therefor—to possible further restriction of the use of the death penalty or to its total abolition, and to state whether they are contemplating restriction or abolition and also to indicate whether changes in this respect have taken place since 1965 ;

3. FURTHER REQUEST the Secretary-General to submit a report on the matter dealt with in paragraphs 1 (c) and 2 above to the Commission on Human Rights through the Economic and Social Council.

131. The above recommendation is, of course, identical to that which was made by the Economic and Social Council. The Consultative Group decided, however, to seek further to assist the General Assembly by providing comments on two issues of detail in that recommendation (paragraphs 141 and 142 below) and on a variety of other issues relating to capital punishment.

132. The Consultative Group recommended that the word *appel* in paragraph 1 (a) (i) in the French text of the draft resolution for action by the General Assembly in its resolution 1337 (XLIV) of the Economic and Social Council, whose significance in the technical legal terminology of some countries is too restricted, should be replaced by the word *recours*, without distinguishing between *recours* on questions of fact and of law.

133. The original Swedish and Venezuelan draft resolution had suggested, in lieu of paragraph 1 (b) of the recommendation set out in

paragraph 130 above, that 'no death sentence shall be carried out until the procedure of appeal and pardon have been terminated and in any case not until six months after the passing of the sentence in the court of first instance'. This suggestion had been withdrawn by the sponsors of the resolution during its discussion in the Commission on Human Rights and in the Economic and Social Council. The Consultative Group nevertheless remained of the view that there is merit in providing a buffer period of time between the finality of the sentence of death and the execution. Certain members suggested a period of one month as a minimum; it was decided, however, not to recommend any period but rather to suggest to Governments the wisdom of fixing some minimum period in accordance with their legal practice and social circumstances.

A. THE CONTROVERSY

134. The Consultative Group decided not to analyse the conflicting general arguments for and against capital punishment but rather to draw the attention of the General Assembly to the definition of that controversy as set out in chapter III of *Capital Punishment*, and chapter III of *Capital Punishment : Developments 1961 to 1965*. Specific aspects of that controversy are dealt with hereunder.

B. THE DATA

135. The Consultative Group, from the information made available to it and from the experience of members in the field of crime and its treatment in their own countries, was of the view that there is a strong trend in most countries towards the abolition of capital punishment or at least towards fewer executions. This tendency is particularly strong in relation to capital punishment for murder, and has legislative, judicial and executive aspects. A growing number of offenders who are sentenced to death are spared through processes of appeal or by executive clemency. Where it is used, capital punishment is increasingly a discretionary rather than a mandatory sanction. The Consultative Group also noted that a number of countries had abolished capital punishment for humanitarian reasons irrespective of any possible deterrent effect it might be thought to have.

136. There is a perceptible tendency in some countries, running contrary to what was noted in the previous paragraph, towards the legislative provision for, and actual application of, capital punishment for certain political and economic crimes. Times of political insecurity and attack have resulted, in some countries, in a larger recourse to capital punishment for statutory offences related to political or racial issues. The Consultative Group was of the view that in such cases it is important that if such a punishment is thought to be essential by the State it should not be mandatory.

137. Almost all countries provide for the exclusion of certain offenders from capital punishment because of their mental and physical condition, age, sex and extenuating circumstances. These exemptions are being gradually broadened at the legislative, judicial and executive levels.

138. The disparity between the legal provisions for capital punishment and the actual application of those provisions grows greater in those countries which have capital punishment in their laws.

C. CAPITAL PUNISHMENT AS AN EXCEPTIONAL SANCTION

139. The capital punishment argument has changed. No member of the Consultative Group supported capital punishment other than as a temporary expedient or until the public should come to see the lack of need for this sanction. All looked with favour towards the day of abolition. Capital punishment thus becomes an 'exceptional', not a routine sanction, which should be justified legislatively, judicially and by the executive: to be used as sparingly as social circumstances permit, so that the provisions of article 3 of the Declaration of Human Rights may be implemented. Such a statement does not imply interference with national autonomy; it simply recognizes that the burden of proof in relation to the need for capital punishment for any type of crime and for the execution of any individual criminal has shifted with the progress of social understanding and a larger recognition of the rights of man.

D. LEGAL SAFEGUARDS

140. The Consultative Group was of the opinion that in those States which retain capital punishment, it is essential that the normal judicial safeguards applicable to criminal trials be strictly observed in capital cases. There must always be a right of appeal to a superior, independent judicial tribunal composed of qualified and properly appointed judges. Further, there must be final recourse to the constitutional authority in the State empowered to commute the death sentence imposed.

141. The Consultative Group strongly endorsed the view in the Secretariat working paper (ST/SOA/SD/CG.2/WP.4) that an essential requirement of effective legal safeguards against error or abuse in capital cases is that the accused should have available at all stages (trial, appeal and petition for clemency) the services of competent, qualified and independent counsel. The Consultative Group recommended that no death sentence should be passed or carried out on a convicted person who had not been so assisted.

142. While free legal aid is practically universally accepted for an indigent accused in a capital case, problems sometimes arise as to the availability of competent, experienced and independent lawyers to undertake the defence in capital cases. It is therefore desirable that special provisions should be made in every jurisdiction to overcome this impediment to justice.

143. In all cases, the accused should be consulted as to the choice of counsel. Full facilities, immunities, and privileges must be extended to lawyers who appear for a person charged with a capital offence.

E. THE ALTERNATIVE SANCTION

144. The Consultative Group noted the increasing tendency, with regard to offenders who are subject to capital punishment but who have been accorded another penalty, to confine them in conditions similar to those of other prisoners and to provide mechanisms for their eventual release. The question of the 'alternative sanction' seemed to the Consultative Group to be of such importance as to merit comment beyond a mere noting of a trend.

145. The Consultative Group defined an 'alternative sanction' as the punishment imposed on persons convicted of offences for which capital punishment might have been imposed by law, but who are not executed because either (a) the court or the jury may exercise discretion in imposing capital punishment and chooses a different penalty, or (b) the court or jury imposed a capital sentence which was subsequently commuted by executive clemency to a different penalty. The Consultative Group also included in its discussion under this heading the sentence imposed on those convicted of an offence which, until recently in the history of the jurisdiction in question, was punishable capitally.

146. The Consultative Group agreed, on the whole, with the recommendation of the *Ad Hoc* Advisory Committee of Experts on the Prevention of Crime and Treatment of Offenders as set out in paragraph 116 of *Capital Punishment: Developments 1961 to 1965*, but expanded those recommendations, as follows, in respect of the treatment of prisoners serving alternative sanctions.

147. Extended imprisonment is the generally accepted alternative sanction. The Consultative Group was of the view that, in principle, such prisoners should be treated neither more severely nor more leniently than other long-term prisoners. Their classification in terms of custody and training, the availability to them of placement in open institutions, and the circumstances of their imprisonment and correctional programmes, should be based on their dangerousness, their proclivity to escape, their training needs, and the available correctional resources; not on the fact that they are serving an alternative sanction.

148. The period of imprisonment should not be so long that the prisoner, if and when he ceases to be a real danger to the community, has no realistic hope of ultimate release. Social protection is not increased by excessively protracted alternative sanctions; the injurious effects of too prolonged incarceration on the offender are well established. It was agreed that there should be periodic review of the cases of all prisoners under alternative sanctions after they have served whatever each country regards as the necessary minimum for their particular crime.

149. Where a country's penal system provides for reductions of the duration of imprisonment in respect of the 'good behaviour' of the prisoner, similar provisions should, as far as possible, be applied to those serving alternative sanctions. If their terms of imprisonment are *indeterminate* or *indefinite*, provision may be made for the parole board, or whatever is the responsible releasing agency, to take first cognizance of the case of each prisoner serving an alternative sanction at a time defined in part by such a provision, with a view to a reduction of sentence for good behaviour.

150. Effective social defence requires that, where the law permits, the prisoner serving an alternative sanction should, when released from prison, be subject to supervision in the community, and possible re-imprisonment, if this should prove necessary. Further, arrangements for half-way houses as a release procedure for long-term prisoners and for 'working out' as a prelude to their release should, as these develop in a country's penal system, be available in appropriate cases to those serving alternative sanctions.

F. NEW CONTRIBUTIONS OF THE CRIMINAL SCIENCES

151. The Consultative Group recognized the continuing interest of the General Assembly and of the Economic and Social Council in the new contributions of the criminal sciences to problems of capital punishment and was of the view that its advice on this topic might be of value on three issues: the diagnosis of the accused and convicted person; the deterrent effect of capital punishment; and the selection of those offenders who present a continuing danger.

152. The provision of adequate diagnostic facilities—medical, psychological, psychiatric and sociological—is highly desirable for the effective and just application of capital punishment in those countries and for those crimes for which it is retained. The Consultative Group recognized that such diagnostic resources, relevant to assessing criminal responsibility, are in scant supply in many countries, but they thought it proper to stress the relationship between such facilities and capital punishment. Diagnostic capacities improve rapidly; the medical and social sciences increasingly throw light on motives and responsibility in individual cases.

153. With regard to deterrence, thought by many to be the pivotal argument in the capital punishment controversy, a distinction must be drawn between murder and crimes against the State. Data are lacking concerning the latter. For the former, it was the view of the Consultative Group that reliance should not be placed on capital punishment to reduce the rates of murder and attempted murder. All the available data suggest that where the murder rate is increasing, abolition does not appear to hasten the increase; where the rate is decreasing, abolition does not appear to interrupt the decrease; where the rate is stable, the presence of or absence of capital punishment does not appear to affect it.

154. While further research into the deterrent effects of capital punishment for murder was not recommended, the Consultative Group was strongly in favour of research studies designed to assist in the selection of offenders serving, or to be sentenced to, alternative sanctions, who continue to be dangerous. Better definition of the criteria of social dangerousness is essential to rational and effective sentencing and to the adjustment of the sentence to the needs of effective sentencing and the adjustment of the sentence to the needs of society. Such research, and the development and effective utilization of selection skills which it should promote, will increase the public's confidence in its protection under law, expedite the trend towards the abolition of capital punishment, and allow judges and correctional administrators alike to adjust sentences and correctional treatments to the reality of the threat which the offender presents to society.

G. REPORTING EXECUTIONS

155. The draft resolution, as originally submitted by Sweden and Venezuela to the Economic and Social Council (E/AC.7/L.514/Rev.1, as orally amended), recommended, *inter alia*, that the General Assembly should 'invite Governments of States Members of the United Nations . . . to notify the Secretary-General semi-annually of any death sentences

subsequently passed and carried out in their countries and of the crimes for which these sentences have been imposed'. This recommendation disappeared as the draft resolution progressed through its debate in the Commission on Human Rights and in the Economic and Social Council. The Consultative Group is not seeking to revive it. Some members of the Consultative Group suggested that the numerous Member States which now collect such data for their own purposes should be invited to supply them regularly to the Secretary-General, and that the willingness of the Secretary-General to receive, collate and disseminate such data should be made known to all Member States.

H. THE COIMBRA CONFERENCE

156. The delegation of Portugal made available to the Consultative Group a report of a conference held at Coimbra in September 1967 on the death penalty, celebrating the centenary of its abolition in Portugal. The Consultative Group received the resolutions that emerged from that conference. It was decided to suggest to the General Assembly, and to all Governments considering variations in their law or practice regarding capital punishment, that they might be assisted by a perusal of these resolutions and the papers on which they were based.

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Judicial Application of the Rule of Law

RECENT SWISS DECISIONS CONSTRUING FUNDAMENTAL RIGHTS

by

L. G. WEERAMANTRY *

RIGHT TO PERSONAL LIBERTY

Power of Court to Review Detention Order made by an Administrative Authority

The decision of the Federal Tribunal of Switzerland in the case of *Chassot v. the Conseil d'Etat of Fribourg* is perhaps one of the most important Swiss decisions of recent times on the right to personal liberty.

The facts of the case were as follows: On February 19, 1968, the Prefect of the Sarine (a region in the Canton of Fribourg), acting under a Cantonal law of 1942, made an administrative order directing the detention of a man named Romain Chassot in a reformatory for a period of two years. The law in question enabled detention orders to be made in respect of persons who were a danger to public health or security.

The prefectural order sought to justify the measure on the grounds that Chassot, who had been earlier detained in the same reformatory for a year and discharged at the end of November 1967, had made no effort to resume work; that he was endangering public security by regularly breaking into the attic of a building for the night in a drunken state, smoking there and flicking cigarette butts around at random creating thereby a risk of fire; that he had terrorized the occupants of the building by his violent manner; and that he had in the short space of ten days wasted Frs 880 out of a sum of Frs 940 which he had inherited. The order also drew attention to the fact that Chassot had earned a reputation for being a ne'er-do-well, a vagabond and a drunkard, and that he had

* B.A. (London); Advocate, Ceylon Bar; of Gray's Inn, Barrister-at-Law; Senior Legal Officer, International Commission of Jurists.

moreover a long list of convictions, principally for theft, drunken driving and 'indecent intentions towards minors'.

Chassot appealed against the order to the Conseil d'Etat¹ of Fribourg, which dismissed his appeal on the ground that the authority competent to make a detention order enjoyed a wide discretion and, though the Conseil d'Etat's own powers were wide, it would avoid examining the facts afresh and substituting its own view for that of the authority of first instance. It would intervene only if the competent authority had transgressed the scope of its discretion by imposing a penalty unwarranted in law or one that was manifestly too severe or too light. The Conseil d'Etat felt that there was no justification for interference in this case as an examination of the police report warranted the conclusion that the appellant had rendered himself a danger to public security. The period of detention did not appear unfair in view of the appellant's many convictions and his previous detention for a year.

Chassot then appealed to the Federal Tribunal to have the decision of the Conseil d'Etat set aside. In his grounds of appeal, he did not expressly plead a violation of his right to personal liberty, which was guaranteed both by Article 3 of the Cantonal Constitution and by federal constitutional law, but contented himself with affirming that the order of detention made against him was arbitrary and baseless.

The Federal Tribunal, however, took the view that, when it was dealing with the inalienable rights of an individual, it would adopt a liberal approach in examining the formal requirements of the appeal. It would be even more ready to do so in the case of an appellant who did not have the benefit of legal advice. It would therefore not limit itself to the grounds of appeal expressly set out, but would examine whether the contested decision violated the Constitution.

The Federal Tribunal stated that any restriction on individual liberty must have a legal basis and should not have as its objective the suppression of this liberty; nor should it have the effect of depriving it of its substance. Every restriction must moreover be shown to be within the public interest.

The Cantonal law under which the prefectural decision had been made specified that 'every person over the age of eighteen whose misconduct or habitual idleness endangers public health or security may by administrative order be detained in a reformatory. Such detention shall be from one to five years'. The provision itself did not have as its object the suppression of the freedom of the individual and its effect was not to deprive that freedom of its substance. But the facts on which an order under the provision might

¹ The Conseil d'Etat is the government of the Swiss cantons, and has in certain cases competence to decide questions of administrative law.

be made must be clearly established and the order must be strictly justified by the public interest.

The prefectural order had taken into consideration two police reports, one of breaking into an attic and another of prodigality, and two complaints by the manager of an apartment house alleging drunkenness, creating danger of fire, assaults on tenants, etc. Chassot contested the police reports and denied the allegations. The Conseil d'Etat had not proceeded to examine the facts in dispute, but had limited itself to determining whether or not the Prefect had acted within his discretion. But in the view of the Federal Tribunal, the Conseil d'Etat enjoyed full power to review both facts and law and should have done so in a case involving a question of personal liberty.

The Conseil d'Etat had wrongly thought that its power was limited to considering police reports in its determination of whether the appellant had by his conduct endangered public health and security. The more serious allegations against the appellant did not emerge from the police reports, but were contained in the complaints of the manager and tenants of the apartment house. In accepting these allegations as true without further examination, the Conseil d'Etat had violated another important personal right of the appellant, namely the right to be heard.

The Federal Tribunal further observed that the facts contained in Chassot's previous record had already formed the basis of an earlier detention order and therefore a new order could only be pronounced if new facts justifying this measure had supervened. Otherwise, an authority could, on the basis of the same facts, renew the detention of an individual indefinitely, thereby clearly violating the principle of individual liberty.

The Federal Tribunal considered the new facts that might justify Chassot's detention and held that they had not been established. One of these facts was Chassot's unwillingness to work. But Chassot's periods of liberty had been very short and had occurred at a difficult time of the year. No allegation had been made that he had refused an offer of employment, and no steps had been taken to verify his story that he had found a job but had been unable to work because of injuries he had sustained. Similarly, the new facts contained in the complaints of the manager and tenants of the apartment house had at no stage been examined.

In the result the Federal Tribunal allowed the appeal, set aside the decision challenged, and sent the case back to the Conseil d'Etat so that it could examine the facts afresh and make an order on the basis of its findings.

Although this case relates primarily to the right to personal liberty, it is important to note that it also upholds two other vital rights of the individual, namely the right to be heard and the right against double jeopardy.

Attention is drawn to the fact that the European Conference of Jurists on the Individual and the State held at Strasbourg in October 1968 specified that one of the minimum requirements for quasi-judicial acts was that the interested party should have the right to be heard, to present evidence and to meet opposing arguments and evidence.¹ The Conference also stressed the importance of paying due regard to the principle *nemo debet bis vexari pro eadem causa*.²

Federal Tribunal of Switzerland

CHASSOT v. THE CONSEIL D'ETAT OF FRIBOURG

Decided: 10 December 1968

The Commission wishes to thank Mr Grisel, *Président de la Chambre du Droit Public* of the *Tribunal Fédéral*, for drawing its attention to this case.

RIGHT TO PROPERTY

Duty to Balance Public and Private Interests when Acquiring Land for Public Purpose

The decision of the Federal Tribunal of Switzerland in the case of *Keller v. Münchenstein* deals with the considerations which should guide the appropriate authority in deciding whether privately owned land should be taken over for a public purpose.

The land in question (just under an acre in area) was the property of the Keller family, which ran a taxi business as well as one of movers and furniture storers in Bâle. This land, which served as a park for the company's vehicles, was situated according to the old zonal plan in the industrial and artisanal zone.

In March/April 1966 the Communal Assembly of Münchenstein adopted a new zonal plan which envisaged a station for the examination of motor vehicles intended to serve the Cantons of Bâle-Ville and Bâle-Campagne. In view of this project and the possible expansion of the station, a new construction and public installation zone was demarcated, which included the Kellers' land.

The Keller family appealed to the Conseil d'Etat of Bâle-Campagne against the new zonal plan asserting that the land in question was not at all necessary for the proposed inspection station but it was indispensable for their own business. They prayed that

¹ See Conclusion 15 (c) of the European Conference of Jurists, *Bulletin* of the ICJ, No. 36, December 1968, p. 7.

² See Conclusion 10 of the European Conference of Jurists, *Bulletin* of the ICJ, No. 36, December 1968, p. 6.

their land be classified in such a manner as to enable them to continue using it for their business in accordance with the earlier plan and scheme. The Conseil d'Etat observed that it was not possible at that point to determine whether the proposed station would ever need to be extended and that so long as this was undecided, it could not take the responsibility of releasing the land in question. It approved the new plan and rejected the Kellers' appeal.

The Kellers then appealed to the Federal Tribunal of Switzerland to have the decision of the Conseil d'Etat set aside in so far as it related to their own land. They pleaded a violation of their right to property and asserted that (a) the creation of a new construction and public zone was not justified and had no legal basis; (b) that it was improbable that the extension of the future station (which was only a project) would ever become necessary, while on the other hand, the land was absolutely essential for their own business, and (c) that the decision challenged violated the principle of Communal autonomy.

The Federal Tribunal took the view that while the construction of the station itself was in the public interest, there was nothing to justify placing the appellant's land in reserve in view of a possible extension. The restriction of the right to property on the basis of a future need of the community which could not then be visualized with certainty was not justified. It was not impossible that the sharp increase of motor traffic after some years might render extension necessary, but this was a distant and undetermined need. Besides, the Committee of Experts appointed by the two Cantons had expressed the view that, if the station at Münchenstein became inadequate at some future time, it should not be expanded, but that a second station should be constructed elsewhere. The Government of Bâle-Campagne had not contested this view, but had stressed the difficulty of finding a suitable piece of land elsewhere. In those circumstances the public interest in the requisition of the Keller land did not seem very important.

On the other hand, the Federal Tribunal felt that the interests of the proprietors to retain their land in order to carry on and even extend their business was of vital importance. The view of the Conseil d'Etat that the public interest should always supersede the rights of the individual was incorrect.

The Federal Tribunal drew attention to its recent rulings which stressed the need for a proper balance between conflicting public and private interests. Holding that in the case in question the balance was clearly in favour of the appellants, the Federal Tribunal allowed the appeal and set aside the decision challenged for absence of public interest in so far as it related to the land of the appellants.

The Bangkok Conference of Jurists on 'The Dynamic Aspects of the Rule of Law in the Modern Age' held in 1965 expressed the

view that nationalization of private enterprises by a democratically elected government when necessary in the public interest was not contrary to the Rule of Law. But such nationalization must be for a *bona fide* purpose and subject to payment of fair and reasonable compensation and must, as declared at the Colombo Colloquium on the Rule of Law, be commensurate with the public purpose contemplated.¹

Federal Tribunal of Switzerland

KELLER v. THE COMMUNE OF MÜNCHENSTEIN AND CONSEIL D'ETAT, BÂLE-CAMPAGNE

Decided : 21 February 1968

Journal des Tribunaux, Lausanne, 1^{re} partie, Droit Fédéral, 1969, No. 3, pp. 79 et seq.

¹ See Conclusions of Colombo Colloquium, *Bulletin* of the ICJ, No. 26 (June 1966), p. 5.

Basic Texts

Important African Declaration

The International Commission of Jurists regards the policies of racial discrimination and colonialism practised in Southern Africa as the gravest systematic denial of justice and violation of elementary human rights in the present day world. Government and legislation based on racial discrimination or on colonialist exploitation cease to be based on justice. Discriminatory laws lead inevitably to the erosion, one after the other, of the elements of the Rule of Law. Deprived of all legal protection, the victims inevitably as a last resort turn to rebellion against tyranny and oppression. These are reasons why the Universal Declaration of Human Rights gave such emphasis to the protection of human rights by the Rule of Law.

Naturally, spokesmen for Africa, who are only too familiar with the injustices which are perpetrated against Africans, denounce in emotive terms apartheid and colonialism. Sometimes they overlook the need to educate world opinion as to the logic and reality of their case. This is why we welcome and decided to publish textually the Manifesto on Southern Africa adopted by the Summit Conference of East and Central African States held in Lusaka on 14-16th April 1969.

Strangely enough, this important document escaped the notice of most of the world press.

It is a statesmanlike and reasoned statement of the problem. Here will be found clearly expressed the will for a non-violent solution and a preference to negotiate rather than to destroy. This is by far the most important statement on Southern Africa to emanate from Africa itself: it deserves the attention of all governments and of all who are interested in justice and fairplay in the world.

**Manifesto Adopted by the Fifth
Summit Conference of East and
Central African States**
on
SOUTHERN AFRICA
Lusaka, 14-16th April 1969

1. When the purpose and the basis of States' international policies are misunderstood, there is introduced into the world a new and unnecessary disharmony, disagreements, conflicts of interest, or different assessments of human priorities, which provoke an excess of tension in the world, and disastrously divide mankind, at a time when united action is necessary to control modern technology and put it to the service of man. It is for this reason that, discovering wide-spread misapprehension of our attitudes and purposes in relation to Southern Africa, we the leaders of East and Central African States meeting at Lusaka, 16th April, 1969, have agreed to issue this Manifesto.

2. By this Manifesto we wish to make clear, beyond all shadow of doubt, our acceptance of the belief that all men are equal, and have equal rights to human dignity and respect, regardless of colour, race, religion, or sex. We believe that all men have the right and the duty to participate, as equal members of the society, in their own government. We do not accept that any individual or group has any right to govern any other group of sane adults, without their consent, and we affirm that only the people of a society, acting together as equals, can determine what is, for them, a good society and a good social, economic, or political organisation.

3. On the basis of these beliefs we do not accept that any one group within a society has the right to rule any society without the continuing consent of all the citizens. We recognise that at any one time there will be, within every society, failures in the implementation of these ideals. We recognise that for the sake of order in human affairs, there may be transitional arrangements while a transformation from group inequalities to individual equality is being effected. But we affirm that without an acceptance of these ideals—without a commitment to these principles of human equality and self-determination—there can be no basis for peace and justice in the world.

4. None of us would claim that within our own States we have achieved that perfect social, economic and political organisation which would ensure a reasonable standard of living for all our people and establish individual security against avoidable hardship or miscarriage of justice. On the contrary, we acknowledge that within our own States the struggle towards human brotherhood and unchallenged human dignity is only beginning. It is on the basis of our commitment to human equality and human dignity, not on the basis of achieved perfection, that we take our stand of hostility towards the colonialism and racial discrimination which is being practised in Southern Africa. It is on the basis of their commitment to these universal principles that we appeal to other members of the human race for support.

5. If the commitment to these principles existed among the States holding power in Southern Africa, any disagreements we might have about the rate of implementation, or about isolated acts of policy, would be matters affecting only our individual relationships with the States concerned. If these commitments existed, our States would not be justified in the expressed and active hostility towards the regimes of Southern Africa such as we have proclaimed and continue to propagate.

6. The truth is, however, that in Mozambique, Angola, Rhodesia, South-West Africa, and the Union of South Africa, there is an open and continued denial of the principles of human equality and national self-determination. This is not a matter of failure in the implementation of accepted human principles. The effective Administrations in all these territories are not struggling towards these difficult goals. They are fighting the principles; they are deliberately organising their societies so as to try to destroy the hold of these principles in the minds of men. It is for this reason that we believe the rest of the world must be interested. For the principle of human equality, and all that flows from it, is either universal or it does not exist. The dignity of all men is destroyed when the manhood of any human being is denied.

7. Our objectives in Southern Africa stem from our commitment to this principle of human equality. We are not hostile to the Administrations of these States because they are manned and controlled by white people. We are hostile to them because they are systems of minority control which exist as a result of, and in the pursuance of, doctrines of human inequality. What we are working for is the right of self-determination for the people of those territories. We are working for a rule in those countries which is based on the will of all the people, and an acceptance of the equality of every citizen.

8. Our stand towards Southern Africa thus involves a rejection of racialism, not a reversal of the existing racial domination. We believe that all the peoples who have made their homes in the countries of Southern Africa are Africans, regardless of the colour of their skins; and we would oppose a racist majority government which adopted a philosophy of deliberate and permanent discrimination between its citizens on grounds of racial origin. We are not talking racialism when we reject the colonialism and apartheid policies now operating in those areas; we are demanding an opportunity for all the people of these States, working together as equal individual citizens, to work out for themselves the institutions and the system of government under which they will, by general consent, live together and work together to build a harmonious society.

9. As an aftermath of the present policies it is likely that different groups within these societies will be self-conscious and fearful. The initial political and economic organisations may well take account of these fears, and this group self-consciousness. But how this is to be done must be a matter exclusively for the peoples of the country concerned, working together. No other nation will have a right to interfere in such affairs. All that the rest of the world has a right to demand is just what we are now asserting—that the arrangements

within any State which wishes to be accepted into the community of nations must be based on an acceptance of the principles of human dignity and equality.

10. To talk of the liberation of Africa is thus to say two things. First, that the peoples in the territories still under colonial rule shall be free to determine for themselves their own institutions of self-government. Secondly, that the individuals in Southern Africa shall be freed from an environment poised by the propaganda of racialism, and given an opportunity to be men—not white men, brown men, yellow men, or black men.

11. Thus the liberation of Africa—for which we are struggling—does not mean a reverse racialism. Nor is it an aspect of African Imperialism. As far as we are concerned the present boundaries of the States of Southern Africa are the boundaries of what will be free and independent African States. There is no question of our seeking or accepting any alterations to our own boundaries at the expense of these future free African nations.

12. On the objective of liberation as thus defined, we can neither surrender nor compromise. We have always preferred, and we still prefer, to achieve it without physical violence. We would prefer to negotiate rather than destroy, to talk rather than kill. We do not advocate violence; we advocate an end to the violence against human dignity which is now being perpetrated by the oppressors of Africa. If peaceful progress to emancipation were possible, or if changed circumstances were to make it possible in the future, we would urge our brothers in the resistance movements to use peaceful methods of struggle even at the cost of some compromise on the timing of change. But while peaceful progress is blocked by actions of those at present in power in the States of Southern Africa, we have no choice but to give to the peoples of those territories all the support of which we are capable in the struggle against their oppressors. This is why the signatory States participate in the movement for the liberation of Africa under the aegis of the Organisation of African Unity. However, the obstacle to change is not the same in all the countries of Southern Africa, and it follows therefore, that the possibility of continuing the struggle through peaceful means varies from one country to another.

13. In *Mozambique* and *Angola*, and in so-called *Portuguese Guinea*, the basic problem is not racialism but a pretence that Portugal exists in Africa. Portugal is situated in Europe; the fact that it is a dictatorship is a matter for the Portuguese to settle. But no decree of the Portuguese dictator, nor legislation passed by any Parliament in Portugal, can make Africa part of Europe. The only thing which could convert a part of Africa into a constituent unit in a union which also includes a European State would be the freely expressed will of the people of that part of Africa. There is no such popular will in the Portuguese colonies. On the contrary, in the absence of any opportunity to negotiate a road to freedom, the peoples of all three territories have taken up arms against the colonial power. They have done this despite the heavy odds against them, and despite the great suffering they know to be involved.

14. Portugal, as a European State, has naturally its own allies in the context of the ideological conflict between West and East. However, in our context, the effect of this is that Portugal is enabled to use her resources to pursue the most heinous war and degradation of man in Africa. The present Manifesto must, therefore, lay bare the fact that the inhuman commitment of Portugal in Africa and her ruthless subjugation of the people of Mozambique, Angola and the so-called Portuguese Guinea, is not only irrelevant to the ideological conflict of power-politics, but it is also diametrically opposed to the politics, the philosophies and the doctrines practised by her Allies in the conduct of their own affairs at home. The peoples of Mozambique, Angola and Portuguese Guinea are not interested in Communism or Capitalism; they are interested in their freedom. They are demanding an acceptance of the principles of independence on the basis of majority rule, and for many years they called for discussions on this issue. Only when their demand for talks was continually ignored did they begin to fight. Even now, if Portugal should change her policy and accept the principle of self-determination, we would urge the Liberation Movements to desist from their armed struggle and to co-operate in the mechanics of a peaceful transfer of power from Portugal to the peoples of the African territories.

15. The fact that many Portuguese citizens have immigrated to these African countries does not affect this issue. Future immigration policy will be a matter for the independent Governments when these are established. In the meantime, we would urge the Liberation Movements to reiterate their statements that all those Portuguese people who have made their homes in Mozambique, Angola or Portuguese Guinea, and who are willing to give their future loyalty to those states, will be accepted as citizens. And an independent Mozambique, Angola, or Portuguese Guinea may choose to be as friendly with Portugal as Brazil is. That would be the free choice of a free people.

16. In *Rhodesia* the situation is different insofar as the metropolitan power has acknowledged the colonial status of the territory. Unfortunately, however, it has failed to take adequate measures to re-assert its authority against the minority which has seized power with the declared intention of maintaining white domination. The matter cannot rest there. *Rhodesia*, like the rest of Africa, must be free, and its independence must be on the basis of majority rule. If the colonial power is unwilling or unable to effect such a transfer of power to the people, then the people themselves will have no alternative but to capture it as and when they can. And Africa has no alternative but to support them. The question which remains in *Rhodesia* is therefore whether Britain will re-assert her authority in *Rhodesia* and then negotiate the peaceful progress to majority rule before independence. Insofar as Britain is willing to make this second commitment, Africa will co-operate in her attempts to reassert her authority. This is the method of progress which we would prefer; it could involve less suffering for all the peoples of *Rhodesia*, both black and white. But until there is some firm evidence that Britain accepts the principles of independence on the basis of majority rule, and is prepared to take whatever steps are necessary to make it a reality, then Africa has no choice but to support the struggle for the people's freedom by whatever means are open.

17. Just as a settlement of the Rhodesian problem with a minimum of violence is a British responsibility, so a settlement in *South West Africa* with a minimum of violence is a United Nations responsibility. By every canon of international law, and by every precedent, South West Africa should by now have been a sovereign, independent State with a Government based on majority rule. South West Africa was a German colony until 1919, just as Tanganyika, Rwanda and Burundi, Togoland, and Cameroon were German colonies. It was a matter of European politics that when the Mandatory System was established after Germany had been defeated, the administration of South West Africa was given to the white minority Government of South Africa, while the other ex-German colonies in Africa were put into the hands of the British, Belgian, or French Governments. After the Second World War every mandated territory except South West Africa was converted into a Trusteeship Territory and has subsequently gained independence. South Africa, on the other hand has persistently refused to honour even the international obligation it accepted in 1919, and has increasingly applied to South West Africa the inhuman doctrines and organisation of apartheid.

18. The United Nations General Assembly has ruled against this action and in 1966 terminated the Mandate under which South Africa had a legal basis for its occupation and domination of South West Africa. The General Assembly declared that the territory is now the direct responsibility of the United Nations and set up an *ad hoc* Committee to recommend practical means by which South West Africa would be administered, and the people enabled to exercise self-determination and to achieve independence.

19. Nothing could be clearer than this decision—which no permanent member of the Security Council voted against. Yet, since that time no effective measures have been taken to enforce it. South West Africa remains in the clutches of the most ruthless minority Government in Africa. Its people continue to be oppressed and those who advocate even peaceful progress to independence continue to be persecuted. The world has an obligation to use its strength to enforce the decision which all the countries co-operated in making. If they do this there is hope that the change can be effected without great violence. If they fail, then sooner or later the people of South West Africa will take the law into their own hands. The people have been patient beyond belief, but one day their patience will be exhausted. Africa, at least, will then be unable to deny their call for help.

20. The *Union of South Africa* is itself an independent sovereign State and a Member of the United Nations. It is more highly developed and richer than any other nation in Africa. On every legal basis its internal affairs are a matter exclusively for the people of South Africa. Yet the purpose of law is people and we assert that the actions of the South African Government are such that the rest of the world has a responsibility to take some action in defence of humanity.

21. There is one thing about South African oppression which distinguishes it from other oppressive regimes. The apartheid policy adopted by its Government, and supported to a greater or lesser extent by almost all its white citizens, is based on a rejection of man's

humanity. A position of privilege or the experience of oppression in the South African society depends on the one thing which it is beyond the power of any man to change. It depends upon a man's colour, his parentage, and his ancestors. If you are black you cannot escape this categorisation; nor can you escape it if you are white. If you are a black millionaire and a brilliant political scientist, you are still subject to the pass laws and still excluded from political activity. If you are white, even protests against the system and an attempt to reject segregation, will lead you only to the segregation, and the comparative comfort of a white jail. Beliefs, abilities, and behaviour are all irrelevant to a man's status; everything depends upon race. Manhood is irrelevant. The whole system of government and society in South Africa is based on the denial of human equality. And the system is maintained by a ruthless denial of the human rights of the majority of the population—and thus, inevitably of all.

22. These things are known and are regularly condemned in the Councils of the United Nations and elsewhere. But it appears that to many countries international law take precedence over humanity; therefore no action follows the words. Yet even if international law is held to exclude active assistance to the South African opponents of apartheid, it does not demand that the comfort and support of human and commercial intercourse should be given to a government which rejects the manhood of most humanity. South Africa should be excluded from the United Nations Agencies, and even from the United Nations itself. It should be ostracised by the world community. It should be isolated from world trade patterns and left to be self-sufficient if it can. The South African Government cannot be allowed both to reject the very concept of mankind's unity, and to benefit by the strength given through friendly international relations. And certainly Africa cannot acquiesce in the maintenance of the present policies against people of African descent.

23. The signatories of this Manifesto assert that the validity of the principles of human equality and dignity extend to the Union of South Africa just as they extend to the colonial territories of Southern Africa. Before a basis for peaceful development can be established in this continent, these principles must be acknowledged by every nation, and in every State there must be a deliberate attempt to implement them.

24. We re-affirm our commitment to these principles of human equality and human dignity, and to the doctrines of self-determination and non-racialism. We shall work for their extension within our own nations and throughout the continent of Africa.

President K. Kaunda of Zambia presided. The East and Central African States who participated were: Burundi, Central African Republic, Chad, Congo-Brazzaville, Congo-Kinshasa, Ethiopia, Kenya, Malawi, Ruanda, Somalia, Sudan, Tanzania, Uganda, Zambia. The following Heads of State participated: President Kaunda (Zambia), Emperor Haile Selassie (Ethiopia), President Obote (Uganda), President Nyerere (Tanzania) and President Micombero (Burundi). The other States were represented by Ministers.

ICJ News

The question of the Commission's consultative status with the UN Economic and Social Council was discussed by the Council Committee set up to review the consultative status of non-governmental organisations and to recommend the confirmation or withdrawal of the status in the case of each organisation. The recommendation regarding the Commission was that its status should be maintained. The Secretary-General of the Commission, Mr Seán MacBride, had gone to New York to clarify certain points arising in the discussions. At the same time, UNESCO decided, on the application of the Commission, to raise its consultative status from category C to category B; this will certainly encourage an even closer co-operation between the Commission and UNESCO. The Commission is in fact intending to make a special contribution to the success of the International Education Year (AEY) 1970. The Commission followed with particular interest the recent session of the UN Commission on Human Rights in Geneva (which is summarised on pp. 27-32 above). Dr. Janos Toth, the member of the legal staff of the Secretariat who maintains permanent contact with the Palais des Nations, was one of the Commission's observers.

Mr MacBride has been in Rome on three occasions during the past few months; as a lay participant in the work of the Pontifical Commission 'Justice and Peace', where he presented a comprehensive working paper on the legal protection of human rights (24-27th March); on 23rd April to give a lecture on the same subject to seminarians of Catholic universities and on 24th-25th May to take part in a 'Rencontre' on Spain, organised by the International Association of Democratic Lawyers. On 18th April, he was guest of honour and principal speaker at a Conference of the Rotary International in Great Britain and Ireland held at Bournemouth, at which five thousand members participated. On 3rd May, Mr MacBride took part in a symposium organised by the International Press Institute at Zurich. There were participants representing the press and the legal professions from most of the countries covered by the comparative study on 'Libel Laws affecting the Press' which is being carried out by the Institute with the co-operation of the Commission acting as advisors on the legal aspects. Mr Daniel Marchand, who, on the Secretariat's side, was one of the principal research workers for this study, also took part in the symposium. Mr MacBride was present in Strasbourg at the Session of the Consultative Assembly of the Council of Europe to celebrate the 20th anniversary of the Council (12-17th May). Miss Muireann McHugh, a member of the legal staff, took part in the recent session at Strasbourg of the Committee of NGOs having consultative status with the Council.

When Mr George Papadopoulos, the head of the present regime in Greece, announced the lifting of a certain number of restrictions on the occasion of the second anniversary of the Coup d'Etat, the Secretary-General sent him the following telegramme: *The International Commission of Jurists happy to learn of liberal measures announced looks forward to their full and effective implementation STOP it hopes that this introduces genuine movement towards prompt return of democratic freedoms in Greece STOP it stresses as first essential cessation of prosecutions and other oppressive measures against non-conformists and the immediate and unconditional release of political prisoners or detainees on the mainland and elsewhere STOP it urgently calls for termination of martial law and complete political amnesty as indispensable prerequisites for exercise of fundamental human rights STOP it repeats that these are essential measures without which all*

other liberal measures valueless STOP it emphasises that only observance of the Rule of Law can ensure proper administration of justice and social harmony.

Measures which go some way towards the restoration of democracy should be accepted as valuable to the extent that they are put into practice or effectively improve the situation. This is however on the assumption that such measures are only a first step rapidly to be followed by others; if this is not the case, they can only be discarded as political camouflage. It is not merely by the lifting of press censorship or the restoring of freedom of association that the citizen will be enabled to exercise his rights fully and freely; he will still be under the shadow of martial law decreed in the state of emergency, which gives the authorities power to imprison him for a slip of the tongue. In this connection reference should be made to Article 136 (2) of the new Constitution now in force, which provides that the 'Basic Decrees' of the Colonels shall, in the case of a conflict, prevail over the provisions of the Constitution; such a construction has been confirmed in a decision of the Council of State (No. 503 of 1969). Consequently, 'Basic Decree B' of 5th May 1967 imposing the state of emergency and martial law and suspending constitutional guarantees of all fundamental freedoms can, until it is repealed, always be invoked against any citizen. It is thus clear that the lifting of martial law, which the Commission has continually called for, is a precondition to the return of democracy.

As yet, there has been no sign that the promises made a month ago are being fulfilled. The release of prisoners seems in fact to be rarer and arrests more frequent. It was particularly discouraging for the Commission to learn of the arrest of an Athens Lawyer, Mr Demetrios Touloupas, who as far as can be gathered, is in effect accused of being a liberal and of defending opponents to the regime.

In April, Mr Daniel Marchand, a member of the legal staff, who was returning to Geneva after a private visit to Venezuela took advantage of his itinerary to stop in Tunisia and in Morocco, where for some time there have been plans to set up a National Section; these now seem well under way. It is hoped that members of the Judiciary, the Bar and the Faculty of Law will be able to meet in the near future to finalise arrangements for the Moroccan Section.

It was most encouraging to learn that on the initiative of Mr Justice Triantafyllides, of the Supreme Court of Nicosia (Cyprus), a meeting was held on 10th May to discuss the establishment of a Cypriot National Section of the ICJ. The Commission expresses its warmest support for such a project and looks forward to its successful realisation.

The Commission also learnt, with great pleasure, that the first Annual General Meeting of the Japanese National Section was held in Tokyo on 10th March. The Meeting adopted unanimously the Constitution of the Section and the Standing Rules of the General Meeting. The following officers were elected: President: Mr. Masatoshi Yokota, former Justice of the Supreme Court of Japan; Vice Presidents: Mr Toshio Iriye, Justice of the Supreme Court of Japan, Mr Taked Susuki, Professor Emeritus of the University of Tokyo and Mr Kyozo Yuasa, lawyer; General Secretary: Miss Kinuko Kubota. The Meeting also decided upon the activities of the Section, which is to include the publication of 'Law and Human Rights' twice a year and the holding of a Seminar on a subject relating to the Rule of Law at least once a year. The Section also held round table discussions in February and March on libel laws and the press. Taking part were members of the Section and representatives of the Japan Newspaper Publishers and Editors Association. The conclusions of the meeting were transmitted to the Symposium at Zurich referred to above. This newly-formed Section already has 170 members, which is an indication of its dynamism and is encouraging for the success it richly deserves.

Books of Interest

Apartheid

Its effects on Education, Science, Culture and Information

UNESCO publication, Paris 1967; pp. 205

Essays on Human Rights

A Series of Lectures Delivered at Victoria University of Wellington
by K. J. Keith

Sweet & Maxwell (N.Z.) Ltd. Wellington 1968; pp. 199

La Suisse et la Convention Européenne des Droits de l'Homme

by Blaise-François Junod

Printed at Neuchâtel 1968; pp. 180

Non-Violence and Aggression

by H. J. N. Horsburgh

A Study of Gandhi's Moral Equivalent of War
Oxford University Press, London 1968; pp. 207

The Application of the European Convention on Human Rights

by J. E. S. Fawcett

Clarendon Press: Oxford University Press, London 1969; pp. 368

The United Nations and Human Rights

by Clark M. Eichelberger

(18th Report of the Commission to study the Organization of Peace)
Oceana Publications, Inc., New York 1968; pp. 239

Justice and the Legal System in the USSR

by Robert Conquest

Soviet Study Series, The Bodley Head, London 1968; pp. 152

La Ligue Arabe

by Pierre Beyssade

Edited by Planète, Paris 1968; pp. 262

L'Ordre règne à Prague

by Isabelle Vichniac

Library Fayard, Paris 1968; pp. 184

Progress, Coexistence and Intellectual Freedom

by Andrei D. Sakharov

Andre Deutsch, London 1968; pp. 158

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