The International Commission of Jurists

By Sir Leslie Knox Munro

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I find, as Secretary-General of the International Commission of Jurists, a growing interest throughout the world in its objectives and its work. I am satisfied that for a long time to come there will be a need for such a body to secure the observance of the Rule of Law.

Let me quote the aims and objectives of the Commission as set forth in its Statute:

The Commission is dedicated to the support and advancement of those principles of justice which constitute the basis of the Rule of Law. The Commission conceives that the establishment and enforcement of a legal system which denies the fundamental rights of the individual violate the Rule of Law.

The Commission will uphold the best traditions and the highest ideals of the administration of justice and the supremacy of law and, by mobilizing the jurists of the world in support of the Rule of Law, will, inter alia, advance and fortify the independence of the judiciary and the legal profession and promote fair trial for all persons accused of crime.

The Commission will foster understanding of and respect for the Rule of Law and give aid and encouragement to those peoples to whom the Rule of Law is denied.

The Commission consists of jurists who are dedicated to its aims and objectives and who in their persons provide wide geographic representation of the legal profession of the free world. The Commission includes 25 members, which number may be increased to a maximum of 40.

I think that it may be properly said that the Jurists now forming the Commission are representative judges and lawyers from all parts of the non-Communist world. Communist judges and lawyers are not associated with the Commission for the simple reason that they are opposed to the Rule of Law as defined by the Commission.

The Commission normally functions through an Executive Committee which meets in Geneva where the headquarters of the Commission are, but from time to time it has met in other countries.

The Secretary-General is responsible for the practical work necessary for the realization of the aims and objectives of the Commission and is empowered within the general policy laid down by the Executive Committee to take such action as may be necessary to this end.

In his report of the Commission's Congress in New Delhi, Mr. Norman Marsh, one of my distinguished predecessors and a well-known British authority on international and comparative law, has thus defined the Rule of Law:
The Rule of Law, as defined in this paper, may therefore be characterized as: "The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man."

The Commission has evolved, in its ten years of operation, a policy basically carried out in two ways:

a) the investigation of systematic and general violations of the Rule of Law. This requires taking appropriate steps to expose those violations to the world at large and taking such action as may be necessary to rectify breaches of the Rule of Law;

b) the promotion and strengthening of the Rule of Law throughout the world by making more precise its meaning, particularly with reference to rapidly changing societies.

The Commission has been most successful in its investigations of systematic violations of human rights. In carrying out this responsibility, aside from the publication of articles, special reports and the issue of press statements, the Commission has relied heavily in recent years on the situations in countries requiring support of the Rule of Law.

It can be argued that the preservation and promotion of the Rule of Law is a part of the daily life of the lawyer, but this is all too frequently forgotten by lawyers whose main concern too often seems to be the increase of income. For example, to have practicing lawyers devote time to the studying of the importance of the independence of the Judiciary—a real and practical problem—requires great invocation on the part of the Commission staff. This is quite remarkable in view of the fact that today there are so many glaring examples of countries, close at hand, where the Rule of Law is non-existent and human suffering is appalling, where the efforts of lawyers and other leading members of the community could have averted disaster. In spite of obstacles and the lassitude from which so many of our colleagues suffer, the Commission will continue to encourage its many associates and friends to act more vigorously for the principles in which it believes and which should be the daily concern of all lawyers.

The Commission has three regular publications: the Bulletin, Journal, and Newsletter. Each has its specific purpose and advantages. The Bulletin, which will now appear four times per year, is designed to permit the Commission to offer frequent editorial comments on instances in which the Rule of Law may be threatened or strengthened. The articles are based on the usual painstaking research, but are generally short and without footnotes. The Bulletin generally consists of between fifty and fifty-six pages. The Journal is in a sense more "academic" in appearance, is designed to contain longer articles with extensive footnotes and is more exhaustive in its presentation of positive steps taken to strengthen the Rule of Law or to denounce violations of human rights. The Journal appears twice a year and averages about 160 pages in length. The Newsletter is essentially a house organ and comments on current Commission activities; it includes a report on missions, texts of press statements, changes in Commission membership, and similar matters. The Newsletter comes to eight or twelve pages and appears whenever circumstances warrant it.

As mentioned above, it is intended that the Commission publish annually four numbers of the Bulletin, two numbers of the Journal and such Newsletters as may be considered necessary. Since October 1954, when the Commission's publication programme was initiated, the Commission has published fourteen Bulletins (five since January 1959), nine Journals (four since January 1959) and thirteen Newsletters (eight since January 1959).

During the period January 1959 to October 1962, the Commission has distributed a total of 1,134,961 individual units of publications in all languages (1959: 276,330; 1960: 262,531; 1961: 257,642; 1962: 338,418).

I should emphasize that the 40 to 50,000 judges, lawyers and teachers of Law who receive the Commission's publications are to the best of my belief actively interested in our work and its publications. They are on our mailing list because they have asked to be put on the list.

Once every three or four years, the Commission has a World Congress, which is always widely attended by Jurists from all over the world. Thus, we have had Congresses in Berlin, Athens, New Delhi, and last month in Petropolis near Rio de Janeiro. The Congress at Athens issued what is known as the Act of Athens, and that at Delhi the Declaration of Delhi.

At Petropolis the Congress in what is known as the Resolution of Rio de Janeiro reached these conclusions:

It considered that the protection of the individual from unlawful or excessive interference by government is the foundation of the Rule of Law; the Congress has observed with concern that the rights of the individual were transgressed or ignored in many places in the world and that in many cases this arises from the overreaching by the executive power unrestrained by an independent judiciary. Accordingly the Congress having discussed appropriate measures to remove improper and excessive encroachment by government on the rights of the individual in the field of executive action,

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adopts the conclusions annexed to this Resolution and reaffirms the Act of Athens and the Declaration of Delhi assembled by earlier world conferences; which again were sanctioned in the Law of Lagos by the African Conference on the Rule of Law and accordingly calls upon the International Commission of Jurists to give its attention to the following matters which were in the debates of this Congress:

1. The conditions in varying countries on the independence of the judiciary, its security of tenure and its freedom from control direct or indirect by the executive;
2. The encouragement of the establishment of international courts of human rights on a regional basis;
3. The role of the profession of law in modern society having regard to the conclusions of Committee III and in particular to its preamble which enjoins: "In a changing and interdependent world lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenges and the dangers of the times and to realize the aspirations of all people. The lawyer today should not content himself only with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfill his vocation as a lawyer; he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice.

The conditions to be fulfilled and the steps to be taken in order to enable the lawyer to play this role effectively were dealt with to some extent in the Conclusions of the Fourth Committee of the International Congress of Jurists, New Delhi, India, 1959, and of the Third Committee of the African Conference on the Rule of Law, Lagos Nigeria, 1961.

4. The improvement of legal education where it is needed so that the teaching and the understanding of the Rule of Law in the best traditions of the bench of the bar is inculcated in those entering the profession of the law.

5. The continuance of its important work in investigating and reporting.

There are no doubt varying interpretations of the Rule of Law. Some would identify it with parliamentary democracy, in which there is an opposition and where the principle is adopted of one man one vote. Thus, many denied that the Rule of Law can exist in the single party state.

The question is posed thus: "if a hypothetical one party Afro-Asian state has a free bar, an independent judiciary, a free press and no preventive detention, does not the Rule of Law exist therein as much as it does so in France today?" With the partial acceptance of Pakistan while it was subject to martial law, those Asian states which have adopted one party or military rule do not observe the Rule of Law. I draw your attention to some observations made by Mr. John J. McCloy:

Mr. (Patrick Gordon) Walker has pointed out the fallacy of our belief that democracy and free elections will make friends and win the world. Yet I have the feeling we should not accept too readily the thought that the Asian may not be interested in developing his individual freedoms. Do we not abandon too much to Communism if we cease stressing the simple doctrine of freedom from the oppression of the secret police and the concentration camp? The Asian may be far less sensitive than a Briton to his rights as an individual, but he understands them, or, let us say, recognizes them. Certainly he would appreciate it if he were no longer subject to arbitrary arrest or decapitation. There is something more fundamental here than an electoral system, and given a fair increase in the Asian standard of living, the idea may as readily catch fire in Asia as it did in an earlier day in Europe.

6. What the political form will be in this part of the world is hard to say—it may be a welfare state presided over by an oligarchy—it may well be something far less than parliamentary democracy, as we know it. But constant emphasis on freedom from the police call and slave labour is appealing even if the individual or his whole country never heard of the Bill of Rights. This is a true asset of the West and it is no illusion to continue to feel that all men are attracted to it and better off for it.

There are discouraging manifestations in certain of the new states in Africa of which a prime example is Ghana. While there is a small opposition in the legislature of six, there is no effective opposition. At the same time, there is a preventive detention, whereby the President, Mr. Nkrumah can put into jail for five years, and if he so decides for a further period of five years any person of whose conduct he disapproves. This Statute was validly passed and the Courts in Ghana have held that a person detained has no remedy in the Courts. There is no trial and the only opportunity for regress is an application to the President, who need give no reasons for his refusal to release a detainee. The numbers detained have run into hundreds. Of course, preventive detention is part of the Law of many of the new countries. During the last war, it was employed in this country and the United States. The argument adduced in its favor is that in time of war or where there is no war but a state of emergency, the State should be empowered to act to preserve public safety. I consider the classic case on preventive detention in time of war to be Liversidge v. Anderson 1942 A.C. 206. In this decision, the House of Lords applied the subjective principle and decided that where the Secretary of State acting in good faith under a certain regulation makes an order in which he recites that he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a Court of Law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. I wish to refer in particular to the observations Lord Macmillan made:

In the first place, it is important to have in mind that the regulation in question is a war measure. This is not to say that the courts ought to adopt in wartime canons of construction different from those which they follow in peace time. The fact that the nation is at war is no justification for any relaxation of the vigilance of the courts in seeing that the law is duly observed, especially in a matter so fundamental as the liberty of the subject—rather the contrary. But in a time of emergency when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the courts would be slow to attribute to a peace time measure. The purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peace time as well as in war time.

I should add that Lord Atkin strongly dissented. The Commission is constantly inquiring into this question of preventive detention and has protested strongly to Mr. Nkrumah. One of the persons he detained was the President of the national section of the Commission in Ghana.
I am happy to say that this gentleman has been released, but the government of Ghana refused him permission to attend the Congress at Petropolis.

There may be arguments that in time of war or extreme emergency preventive detention is not incompatible to the Rule of Law, but I believe that where the emergency is created in effect by a state removing any opposition, preventive detention is wholly opposed to the Rule of Law.

In this address I must direct myself to the future activities of the Commission.

This aspect was, of course, carefully considered at the Congress meeting at Petropolis. I have given you the terms of the Resolution of Río.

Let me go briefly into some essentials. We are living in a changing society. When I say “we” of lawyers, I would look at this juncture particularly at our brethren in the underdeveloped and emerging countries in Asia, Africa, and Latin America. These countries are subject to enormous stresses, both internal and external. One has only to look at India alone, with its enormous population, its great poverty and its menace from its northern neighbour.

The role of the lawyer in all such countries is of supreme importance. He is always in government. Many lawyers are in the administrative agencies and tribunals. Of course, they form the judiciary, the bar, the solicitor branch of the profession. They function in most government departments. They educate those who are to become lawyers and judges.

The Commission must seek to encourage and when necessary, to protect the lawyer in all his various activities.

The Commission’s duty is to the layman as well as to the lawyer and to help in the task of assisting the layman in the labyrinth of administrative agencies and tribunals. It must encourage lawyers in all countries to see that there are certain minimum standards for the safeguarding of the Rule of Law in the adoption of administrative regulations and in their enforcement.

The Congress considered it desirable that States should prepare and adopt international conventions providing a right to appeal for individuals and interested groups before an international tribunal to guarantee, in exceptional as well as in normal circumstances, the protection of prescribed rights.

“It is considered to be necessary that at least in cases involving Human Rights there should be an international court to which final recourse might be had by an individual whose rights have been infringed or threatened. Such an international tribunal would be a World Court of Human Rights, its writ effective in any jurisdiction.

“The first step in this direction could be regional conventions with optional clauses analogous to The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Inter-American Draft Convention on Human Rights, and regional courts analogous to the European Court of Human Rights. Close liaison between such regional courts would have to be established in order to develop a common body of judicial decisions.”

The Congress and therefore the Commission believes that “In a changing and interdependent world, lawyers should give guidance and leadership in the creation of new legal concepts, institutions and techniques to enable man to meet the challenge and the dangers of the times and to realize the aspirations of all people.

“The lawyer today should not content himself with the conduct of his practice and the administration of justice. He cannot remain a stranger to important developments in economic and social affairs if he is to fulfill his vocation as a lawyer: he should take an active part in the process of change. He will do this by inspiring and promoting economic development and social justice.”

The Commission has a responsibility, as I believe, to encourage legal education.

“For the legal profession to be able to perform its social function satisfactorily, the teaching of law should lay special emphasis on three points:

“1. reveal the processes through which low can evolve, promoting orderly and significant changes in the social and economic organization of society leading to improved standards of living;

“2. stress the study of the principles, institutions and proceedings that are related to the safeguarding and promotion of the rights of individuals and groups;

“3. imbue students with the principles of the Rule of Law, making them aware of its high significance, emphasizing the need of meeting the increasing demands of social justice, and helping develop in the student the personal qualities required to uphold the noble ideals of the profession and secure the effective enforcement of law in the community.”

“There are two interdependent factors: the content of courses and teaching methods. What follows is in no sense a suggested complete curriculum for law students. Obviously important subjects for the establishment of the Rule of Law are those which stress the content of human freedoms and the protection of the individual from arbitrary action: constitutional and administrative law, criminal law and international legal studies. The importance of procedural safeguards for human rights makes the study of procedural law indispensable. Students must be instructed in general legal principles and in reasoning on specific legal problems. All courses must be taught with emphasis on their social, economic, political and historical background.

“A reference should be made regularly to other legal systems and comparisons drawn between them so as to
allow a more precise evaluation of the merits and defects of the students’ own legal system.

“Law Schools should be an active forum for all matters of legal interest and not merely function for the training of law students. They should therefore organize discussions of topics relating to legal reform which concern the area served by them. They should provide refresher courses in new developments of law.”

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Shown on the bench of the Kirkland Courtroom after hearing argument in two cases from the Court’s regular calendar, left to right: The Honorable Arthur J. Murphy, JD’22, the Honorable Henry M. Burman, Presiding Justice, and the Honorable Robert E. English, JD’33, all of the Illinois Appellate Court.

The 1962–63 Committee for the Hinton Moot Court Competition. Seated, clockwise from left front: Richard L. Sigal, A.B., Yale University, Chairman; Donald Segal, S.B., University of Wisconsin, Vice-Chairman; Donald Elsbury, S.B., I.I.T., Vice-Chairman; Henry W. Siegel, A.B., A.M., U.C.L.A., Secretary; Alexander Allison, A.B., Amherst College; Dennis H. Kops, A.B., Harpur College; Barry E. Fink, B.S.C., DePaul University; Ronald Cope, A.B., University of Chicago; Gary Bengston, A.B., Southern Illinois University; Robert Leone, A.B., DePaul University; Russell M. Pelton, A.B., DePauw University; Gaar W. Steiner, A.B., Lawrence College; and Daniel L. Rubin, S.B., University of Pennsylvania. Standing, left to right: Stewart Diamond, A.B., University of Chicago; Thomas Mansager, A.B., Wesleyan University; Paul J. Wisner, S.B., Marquette University; and Charles R. Staley, A.B., Harvard University.

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