

THE INTERNATIONAL COMMISSION OF JURISTS

JOSEPH T. THORSON*

Ottawa

The International Commission of Jurists is one of many international organizations that have come into existence since the end of the second world war, but it differs from most of them in that it consists of persons acting in their individual capacities and not as representatives of the countries from which they come. It has its headquarters at The Hague and national sections in many countries. It is concerned with the advancement of freedom and justice and to that end seeks to unite the lawyers of the world in the defence of freedom under the Rule of Law in those countries where it still exists and in the effort to restore it in the countries where it has been denied.

The Commission had its origin in a resolution of the International Congress of Jurists held in 1952 at West Berlin. This Congress met under unusual circumstances. After the establishment of East Germany as a Communist Republic following the elections of 1949, there was a large exodus of persons to West Berlin, styled an island in a Soviet sea, from East Berlin, which was under Soviet occupation, and from the Soviet Zone of Germany. In this exodus there were practising lawyers, law teachers and judges. These persons set up an organization in West Berlin known as "The Investigating Committee of Free-minded Jurists from the Soviet Zone" to give advice and aid to persons in the Soviet Zone, to record instances of violation of justice in the administration of that area, and to attempt by various means to check them. The extent of the Committee's activities is indicated by the fact that over a period prior to 1952, and subsequently, approximately 200 persons per day sought its advice. After the Committee had operated for a considerable period and collected substantial evidence of systematic injustice in the Soviet Zone, it conceived the idea of inviting lawyers from the "Free World"

*The Hon. Joseph T. Thorson, President of the Exchequer Court of Canada and of the International Commission of Jurists.

to meet in West Berlin, placing before them the evidence that it had compiled and obtaining their opinion of the value of its methods and work. Accordingly, the first International Congress of Jurists met in West Berlin in July of 1952. The convening of the Congress was made possible by the generosity of United States citizens of German origin who desired to see the unification of Germany. The Congress consisted of lawyers from forty-three countries, all meeting in their individual capacities and free to express their own opinions. Its members included judges and law teachers as well as practising lawyers. The Congress organized itself into working committees for the study of the documentary evidence gathered by the Investigating Committee and the hearing of witnesses. These committees were convinced that there had been serious violations of justice in the Soviet Zone and reported their findings accordingly. Their reports were approved by the Congress. It gave unanimous approval of the methods and work of the Investigating Committee and expressed the hope that it would continue its work in rendering aid to the victims of injustice in the Soviet Zone and stimulating faith that the Rule of Law would ultimately prevail and freedom and justice be restored.

The Berlin Congress decided in one of its resolutions that the study on which its members had been engaged should be continued and to that end appointed a Standing Committee of the Congress with instructions that it should establish a secretariat at The Hague. It did so and proceeded with the task of mobilizing the lawyers of the "Free World" to the support of the Rule of Law.

Soon after this Standing Committee was constituted it was realized that the scope of its activities ought not to be confined to the exposure and denunciation of violations of justice in the Soviet Zone of Germany but should be extended to their exposure and denunciation in whatever part of the world they occur. The name of the Standing Committee was accordingly changed to that of The International Commission of Jurists and its membership was enlarged. It now consists of sixteen persons, its members coming from the United Kingdom, France, West Germany, Italy, Netherlands, Denmark, Sweden and Switzerland in Europe, India, Pakistan and Lebanon in Asia, Brazil and Uruguay in South America and the United States and Canada in North America. All the members serve in their individual capacities and do not, directly or indirectly, represent the countries from which they come. This is consistent with the objective of the Commission that lawyers

throughout the world, regardless of the system of law under which they live, should unite in the battle for the preservation and restoration of freedom under the Rule of Law and its belief that lawyers, meaning thereby judges and law teachers as well as practitioners, owe a special responsibility to strive for the attainment of the aim of the Commission as expressed in the motto which it has adopted, "That every State and every citizen shall be free under the Rule of Law."

After the Commission had established its Secretariat at The Hague with its Secretary General in charge, it proceeded to enlist support for its objective in various ways, including a wide publication of the report of the Berlin Congress, the issue of bulletins and the promotion of national sections.

The Commission was enabled to carry on its activities by financial contributions made by United States lawyers, which entirely replaced the financial aid that had made the convening of the Berlin Congress possible. In 1953 the American Bar Association appointed a special committee to coöperate with the Commission and the Association of the Bar of the City of New York appointed a similar committee. As a result the American Fund for Free Jurists was set up to receive contributions to enable the work of the Commission to be carried on. These contributions have been made in generous fashion by individual American lawyers and law associations. Moreover, the Commission's objective was endorsed by the American Bar Association. At its annual meeting in 1953 it passed the following resolution:

Resolved, that the American Bar Association endorses the program of the International Commission of Jurists in exposing systematic injustice and denials of individual rights in countries lying behind the Iron Curtain and in bringing to lawyers in those countries, who attempt to secure justice and to protect such rights, the encouragement and understanding of the lawyers of the free world.

Subsequently, the American Bar Association established a special committee to stimulate the interest of the American Bar in the work of the Commission, and various other Bar Associations in the United States have followed a similar course. Moreover, leading lawyers in the United States have shown their support of the Commission's aim by subscribing to the following resolution:

We, the undersigned, wishing to add our support to that of lawyers in many other nations in a fight which is vital to lawyers everywhere, do hereby endorse the work of the International Commission of Jurists at The Hague in the promotion of the principles of justice under law

and in publicizing and denouncing the systematic destruction of the law in Communist nations and wherever such systematic injustice may occur.

In the course of its activities the Commission undertook a study of the administration of justice in the Soviet satellite countries and prepared a substantial documentation under the heading "Justice Enslaved", showing the existence there of a system in which justice is enslaved to serve the needs of a political regime. It also took steps to summon another international gathering of lawyers and eventually it made arrangements for an International Congress of Jurists to meet in Athens in June of 1955. This Congress differed from the Berlin one in two respects. Its members came to Athens on the express invitation of the International Commission of Jurists and its scope of activity was general rather than specific. Approximately 150 lawyers from forty-eight different countries accepted the Commission's invitation. Every continent was represented. The Athens Congress was organized into working committees along the same lines as the Congress at Berlin and the documentation "Justice Enslaved" was submitted to its members. As at Berlin the committees made their reports condemning the violations of justice that had been brought to their attention.

While the Athens Congress was invited, "to consider what minimum safeguards are necessary to ensure the use of the Rule of Law and the protection of individuals against arbitrary action of the State", and the material specifically laid before it was the collection of documents entitled "Justice Enslaved", its outstanding accomplishment was the unanimous adoption of the statement of principles embodied in what was called the "Act of Athens". This was in the following terms:

We free jurists from forty-eight countries, assembled in Athens at the invitation of the International Commission of Jurists, being devoted to the Rule of Law which springs from the rights of the individual developed through history in the age-old struggle of mankind for freedom; which rights include freedom of speech, press, worship, assembly and association and the right to free elections to the end that laws are enacted by the duly elected representatives of the people and afford equal protection to all.

Being concerned by the disregard of the Rule of Law in various parts of the world, and being convinced that the maintenance of the fundamental principles of justice is essential to a lasting peace throughout the world,

Do solemnly Declare that:

1. The State is subject to the law.

2. Governments should respect the rights of the individual under the Rule of Law and provide effective means for their enforcement.
3. Judges should be guided by the Rule of Law, protect and enforce it without fear or favor and resist any encroachments by governments or political parties on their independence as judges.
4. Lawyers of the world should preserve the independence of their profession, assert the rights of the individual under the Rule of Law and insist that every accused is accorded a fair trial.

And we call upon all judges and lawyers to observe these principles and,

Request the International Commission of Jurists to dedicate itself to the universal acceptance of these principles and expose and denounce all violations of the Rule of Law.

The statement may fairly be regarded as outstanding when the circumstances under which it was made are considered. The membership of the Congress included high court judges, well-known professors of law and prominent practising lawyers, trained under many different systems of law. And while the agenda of the Congress was confined to questions of a juridical nature, it proved to be impossible to exclude discussion of such controversial subjects as the "apartheid" policy of South Africa and the desire of the Greek Cypriots for union with Greece. At times the tenseness of the discussion threatened the success of the Congress. Yet, in spite of the differences in training and the strong feelings on the controversial subjects mentioned, there was unanimity of opinion in the adoption of the Act of Athens and the principle of the Rule of Law embodied in it, based as it was on the foundation of freedom and equality.

A striking tribute to the unanimity which the lawyers of the Athens Congress were able to reach has been paid by Chief Justice Earl Warren of the Supreme Court of the United States. In an article appearing in "Fortune" in November 1955, he wrote:

The U.N. has not succeeded in writing a generally satisfactory Bill of Human Rights. This does not mean that there is no measure of international agreement on this vital subject. Last June an International Congress of Jurists, composed of lawyers, judges and teachers from forty-nine nations, showed an astonishing unanimity in their so-called Act of Athens, defining the basic characteristics of a free system. They declared that the state is subject to the law, and owes its citizens the means to enforce their rights; that judges should uphold the rule of law in entire political independence; that lawyers of the world should insist on a fair trial for every accused; and that the rights of the individual to be protected by the rule of law, include freedom of speech, press, worship, assembly, association, and free election. If by 1980 this writ should run through all the nations whose lawyers

helped frame it, then indeed will the great tradition of government under law be established beyond challenge in the world.

Since the Athens Congress there has been a great upsurge in the activities of the Commission. It has been formally incorporated as a legal entity under the laws of the Netherlands. Article 4 of its governing statute states its aims and objectives as follows:

Art. 4. 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 violates 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.

Articles 5 and 6 set out the Commission's methods of action for carrying out its aims and objectives:

Art. 5. The aims and objectives of the Commission are carried out through the publication of printed matter, including bulletins and periodicals; the organization of private lectures, public meetings and congresses; the preparation and transmission of suitable radio and television broadcasts, and generally any other type of activity appropriate to achieve the objectives of the Commission.

Art. 6. The Commission further proposes to coöperate with national and international legal organizations and groups engaged in activities consistent with the aims, objectives and procedures defined in the present Statute.

And article 11 provides for the formation of national sections:

Art. 11. To gain support for its efforts, the Commission will encourage the formation of national groups of Free Jurists which pursue the same objectives as the Commission. Such National Groups, regularly constituted according to the laws of their respective countries, will be independent of the Commission but will coöperate with the Commission on the basis of mutuality of purpose and interests, and so long as they are recognized by the Commission they may describe themselves as being affiliated with the International Commission.

Prior to the convening of the Athens Congress, national sections had been formed in Sweden, France, West Germany, Turkey and Greece, but since then the movement has spread rapidly

and there are now additional national sections in England, Italy, Belgium, Netherlands, Finland, Iran, Philippines, Brazil, Chile, Uruguay and Guatemala. Other national sections are in the course of formation in Australia, Canada, Mexico, Cuba and Peru. In the United States widespread support is given to the Commission by bar associations in different parts of the country and by individual lawyers.

An indication of the extent of the interest of lawyers in the activities of the Commission is shown by the fact that its publications are distributed to approximately 18,000 lawyers in ninety-three different countries. The interest continues to grow.

It may also be mentioned that the Commission has been accorded consultative status with the Economic and Social Council of the United Nations.

While the earlier activities of the Commission were primarily concerned with the exposure and denunciation of violations of justice in the Soviet Zone of Germany and in the Soviet satellite countries it has realized that its duty is twofold. It must continue its policy of exposing and denouncing violations of justice, if it is to give hope of the restoration of freedom to the peoples to whom it has been denied. The recent events in Hungary, following the uprising there late in 1956, illustrate the compelling need for such a course. The Commission has been alive to its duty in that respect. On March 2nd, 1957, it summoned an international conference of distinguished lawyers from fourteen different countries to meet at The Hague. The documents put before this conference and its findings showing grave shortcomings of the judicial system in Hungary were presented to the United Nation's Special Committee on the Problem of Hungary by a distinguished member of the Commission. Moreover, the Commission realizes that it must discharge this duty of arousing public opinion against abuses of fundamental principles of justice wherever they occur, regardless of the political systems governing the countries in which they arise, whether communist, totalitarian or allegedly freedom loving. Lawyers owe a special duty of constant vigilance to see that fundamental principles are not violated.

But while the Commission has determined that it must continue on the course on which it started it has also realized the need of a positive approach to its objective. If lawyers are to be united for the preservation of freedom under the Rule of Law more must be done than to condemn denials of freedom. There must be a clarification of what is meant by the Rule of Law which they are

called upon to maintain. And while such Rule of Law must be based on freedom, it is essential that the freedom of the individual should accord with the needs of organized society.

The need for such a clarification has been intensified since the Athens Congress. While its members unanimously approve the Act of Athens, their action was the adoption of a principle in general terms; but it was realized that if practical results were to be accomplished a more particular statement of the essential elements of the Rule of Law and the freedom and equality on which it must be based was necessary. Indeed, one of the resolutions of the Athens Congress asked the Commission to formulate a statement of the principles of justice under law.

The Commission is now attempting such a formulation. To that end it has undertaken a world-wide enquiry into the operation of the Rule of Law under the various legal systems of the countries of the "Free World". The problem is a complex one. The term Rule of Law has been used to designate concepts that have varied from time to time and its meaning is not the same in all parts of the world. The concept that was developed in a society based on the individualism of the strong may not meet the requirements of a welfare state with its concern for all individuals. And a view that suits a people with a long experience of political freedom may not appeal to the peoples of countries where independence and freedom have only recently been acquired.

With consciousness of the difficulties of the problem the Commission has planned the stages of its project. In general terms it has considered that the basic idea uniting lawyers is a concept of the Rule of Law meaning:

The institutions and procedures, not always identical, but broadly similar, which experience and tradition in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be essential to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.

With this consideration in mind the Commission has prepared and circulated a questionnaire¹ on the nature and working of certain institutions and procedures which are widely felt by lawyers in many countries to be an essential protection of the individual within the framework of an organized society.

This questionnaire has been distributed to some 70,000 lawyers and legal institutions throughout the world. The importance of

¹ See appendix, *infra*.

the project has been quickly recognized. In the United States some fifteen legal centres have been engaged in providing the necessary information. The Commission has also secured the coöperation of other legal groups. With the assistance of its national sections it is in touch with legal groups in some twenty-six countries working on the questionnaire. These include countries of the Far East such as Australia, New Zealand, Japan, Philippines, Thailand, Pakistan and India as well as countries in Europe and North and South America. And steps are being taken to form similar legal groups in other countries.

It is hoped that the answers to the questionnaire will be received by the end of 1957. The Secretariat of the Commission will then prepare draft reports outlining the following:

1. What legal rules, procedures and institutions are necessary to protect the freedom of the individual within the framework of an organized society?
2. To what extent existing rules, procedures and institutions fail to achieve this object?
3. In what different ways, making due allowance for varying political economic and social circumstances, can this object be achieved?

When these draft reports have been prepared they will be submitted to the coöperating legal groups for comment. A final general report will then be prepared. This will be in the form of a survey of the law and practice concerning the institutions and procedures dealt with in the questionnaire and will point out the common and divergent elements. It will also include under each division of the subject a draft conclusion which, in the opinion of the Commission, may provide a basis of agreement and a standard of administration in the different legal systems of the world.

The Commission's effort will be complementary to the work on Human Rights which has been and is being done by the United Nations and the Council of Europe. It will aim at more detailed and immediately practical matters of specific interest to lawyers engaged in the actual administration of the law within their respective countries.

In order to ensure the fullest exchange of views on the matters raised in the questionnaire and the general acceptability of the conclusions provisionally reached the Commission considers it necessary to summon a Congress of leading jurists to examine its report.

The Commission has considered the most suitable venue for such a Congress. It is impressed with the interest shown in the

many countries of the world that have recently assumed or are about to assume responsibility for their judicial systems under a new independent national status. It is the purpose of the Commission to deepen understanding of the Rule of Law in the light of the different economic and political conditions in which it is called upon to operate and so facilitate coöperation between the lawyers of all systems in furtherance of their common concern with the freedom of the individual in an organized society. In the light of these considerations the Commission intends to hold its Congress in one of the major cities of the Far East at the beginning of 1959.

The project on which the Commission has embarked is the first attempt by an organization of lawyers to inquire on a world-wide scale into detailed provisions for ensuring the legal protection of the rights of individuals in organized societies. The project calls for understanding of differences and good will to meet them. The Commission believes that the lawyers who are coöperating on the project will bring these qualities to bear on them and ensure its successful completion. Such a result will be a substantial advance towards the achievement of the objective that brought the Commission into being.

Appendix

A QUESTIONNAIRE ON THE RULE OF LAW

A. Administrative Authorities and the Law.

1. Legislative power.
 - a. Have any administrative authorities the right to make laws by virtue of their own authority?
 - b. Have any administrative authorities the right to make laws (or ordinances, decrees or regulations) by virtue of authority delegated to them by some other organ or organs of the state? If so, by what organ or organs of the state is such authority delegated?
 - c. By what procedure (if any) and before what body (if any) can the legality of a law, ordinance, decree or regulation made by an administrative authority be determined?
2. Activities (other than legislative) of administrative authorities.
 - a. By what procedure (if any) can an administrative authority be compelled to carry out a duty which is imposed upon it by law?
 - b. By what procedure (if any) can an administrative authority be restrained from carrying out acts:
 - (i) in excess, or misapplication, of powers vested in it by law?
 - (ii) which would, if committed by a private individual, constitute a legal wrong?

- c. What remedies (if any) are available to the individual who has suffered damage as a result of acts of omission or commission falling under A(2)a and b above? In particular:
 - (i) against whom (e.g., the wrongdoing agent, the responsible organ or the state)?
 - (ii) if against or concerning the state or a state organ, does the complainant have the same facilities for making good his case that he would have against another private individual or where the state or a state organ was not concerned (e.g., compulsory production of state documents as evidence)?
 - d. By what body or bodies are the remedies available under A(2)c above determined?
3. Administrative authorities and criminal prosecutions.
- a. What person or body is ultimately responsible for the initiation or discontinuance of criminal proceedings?
 - b. Does such a person or body enjoy a discretion in the exercise of the powers given under A(3)a above?
 - c. For what period can the authority responsible for criminal prosecutions hold an accused person in confinement without recourse to the court?
 - d. In the procedure applicable to criminal trials does the prosecutor have the same rights and duties, as regards presentation of the case and production of evidence, as the accused person?
 - e. What person or body (if any) can pardon or suspend the sentence of a convicted person?
4. The legal position of the police.
- a. What organ of the state is ultimately responsible for the conduct of the police?
 - b. What powers of arrest and confinement of accused persons are available to the police which are not accorded to the ordinary citizen?
 - c. What powers of search and other means of gathering evidence (e.g., wire-tapping) are available to the police which are not accorded to the ordinary citizen?
 - d. What limits, directly by a legal prohibition or indirectly by exclusion of the evidence so obtained, are imposed on the methods employed by the police to obtain information or to extract confessions?
 - e. To what extent are the remedies dealt with in the answer to A(2)c above applicable in particular to the illegal acts or omissions of the police?
- B. *The Legislative and the Law.*
1. What legal limitations (if any) restrict the power of the legislative to make laws? In what instrument are these limitations defined? To what extent do you consider these limitations essential to the Rule of Law?
 2. By what procedure and before what body can laws of the legislative

which are inconsistent with the limitations discussed in B(1) above be declared invalid?

3. Is a particular procedure laid down for the revision of the limitations mentioned in B(1) above? Can this procedure be circumvented (e.g., by increasing the size of the legislative to provide a $\frac{2}{3}$ or $\frac{3}{4}$ majority?)
4. What powers has the legislative to punish (a) its own members (b) members of the general public?
5. What powers has the legislative to examine under oath: (a) its own members (b) members of the general public?
6. In what respects does the procedure adopted under B(4) and (5) differ from the procedure followed in the ordinary courts?

C. *The Judiciary and the Law.*

1. By whom are the judges appointed?
2. Under what conditions can they be dismissed? Have any judges in fact been dismissed in the last ten years? (Give particulars, if possible).
3. By whom are the judges promoted?
4. What personal qualifications are required of judges? To what extent do laymen participate in the judicial process? What professional guidance are they given?
5. By what legal instruments are the conditions laid down in C(1-4, inclusive) guaranteed? Is any special procedure required to change them?

D. *The Legal Profession and the Law.*

1. What person or body is responsible for admission to supervision of and expulsion from the practising legal profession?
2. What factors (if any), other than the professional ability and moral rectitude of the lawyer in question and the extent to which the supply of lawyers is adequate to the demand, are allowed to influence the decisions made by the person or body mentioned in D(1) above?
3. Subject to what limitations, directly imposed by the law or indirect (as, for example, by the threat of a diminution in his future practice) is a lawyer free to advise his client and to plead on his behalf in judicial proceedings?
4. Under what circumstances is a lawyer permitted to refuse to accept or to relinquish a brief from a client?

E. *The Individual and the Legal Process.*

1. To what extent has the individual citizen a right to be heard on all matters, however determined, in which his life, liberty or property are concerned?
2. To what extent has the individual citizen the right to legal advice and representation in the matters mentioned in E(1) above?

3. To what extent is the right (if any) under E(2) affected, if the individual has not the material means to secure the legal advice or representation necessary?

F. *General Question* (to be answered separately in respect of A-E above).

To what extent (if at all) do you consider that the answers to this questionnaire reveal a situation in which the fundamental principles of the Rule of Law, as you understand them, are endangered or ignored?

G. *Additional Information.*

What other questions should in your opinion be asked in order to give a complete picture of the way in which the Rule of Law is understood and observed in your country?

An Idea of Despotic Power

When the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit. This is an emblem of despotic government. (Montesquieu, *The Spirit of Laws* (1748) Chap. XIII)