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THE ROLE OF LAW IN THE DEVELOPING STATES OF SOUTHEAST ASIA *

(Some Jurisprudential Aspects of the Application of the Rule of Law in the New States)

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In the early part of the 20th century the principles of the Rule of Law, though accepted in most of the Western states, were not generally accepted in a greater part of the world. It was only after the occurrence of two World Wars that the concepts of the Rule of Law became of

* A review of the Southeast Asian and Pacific Conference of Jurists held under the auspices of the International Commission of Jurists on Feb. 15-19, 1965 in Bangkok. Sources of materials of this paper are the working paper of said conference entitled, "Dynamic Aspects of the Rule of Law in the Modern Age," the country surveys and other literature distributed in said conference.

Invited as Philippine participants were Solicitor General Arturo Alafriz, who was one of the vice chairmen of the conference, Justice Roberto Concepcion, Senator Jose Diokno, former Ambassadors Melquiades Gamboa and Amelito Mutuc, Deans Vicente Abad Santos and Jeremias Montemayor and the writer. About 105 judges, lawyers, law professors, legislators and diplomats from Australia, Burma, Cambodia, Ceylon, Hong Kong, India, Japan, Korea, Laos, Malaysia, New Zealand, Pakistan, the Philippines, Taiwan, Thailand, and South Vietnam and observers from international organizations participated in the conference.

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general application. The scientific progress, the application of mass education, the rapid transmission of ideas through mass media of communication and the easy means of transportation hastened the more general application and the definition of democracy and its application of the Rule of Law. Concomitantly, all these factors also hastened the termination of the colonial era especially in Asia.

The prevalent disregard for the principles of the Rule of Law has compelled most nations to formulate a declaration at least setting out the common standards that should apply to human society in general, regardless of color, race or religion. It was in 1948 that the Universal Declaration of Human Rights was promulgated setting forth in more or less definite terms the rights of individuals. The preamble of said Declaration states among other things that:

> it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Article 6 of the same Declaration also provides that everyone

> has the right to recognition everywhere as a person before the law.

Eventually, most of the nations in Southeast Asia which were newly liberated from colonial powers immediately after World War II encountered various problems one of which was the outright eradication of colonial structures.

To these former colonies, the newly acquired sovereignty and the assertion of nationalistic ideals posed a problem. In fact, in some cases, nationalist ambitions had become the end target of the struggle against colonialism. There was therefore the tendency of disregarding the essential reason for achieving independence. Aside from the achievement of independence and self-determination, there is the more fundamental goal of having a free and democratic society based on justice and the Rule of Law.

The important task of the newly independent states is essentially one of construction, which involves not only the establishment of a democratic and free society but also the economic and social stability, which are the very prerequisites to the effective enjoyment and exercise of the rights of the individual. In short, it means the establishment and strengthening of the Rule of Law in its more dynamic aspects.

It was for this purpose that the International Commission of Jurists organized the regional conference of Southeast Asian and Pacific Conference of Jurists in Bangkok on February 15-19, 1965. The International Commission of Jurists is a non-governmental organization dedicated to the support and advancement of the Rule of Law throughout the world. This organization, composed of lawyers in all states, holds that the Rule of Law is a dynamic concept which should be employed not only to safeguard and advance civil and political rights of the individual, but also to promote social, economic and cultural conditions under which his legitimate aspirations may be realized.[1]

Though almost all the more developed countries of the West do believe and practice democracy, it is also true that those in underdeveloped states also believe in democracy and the right of self-determination not because these principles were taught by their former colonial powers but because they fully realize that the dignity of man is possible in a democratic state. It is also well to remember, however, that to the teeming millions of Asia and Africa, things like freedom of speech, freedom of the press, freedom of religion, due process of law and even the concept of human dignity itself are only of academic interest. For the ordinary man in Asia, the primary problem is where to get his next meal. Strangely enough, any form of government, even if totalitarian, that can immediately deliver to him his food and satisfy his hunger is a good government. It does not really matter for him whether he loses his political or civil rights, which he has not fully understood in the first place, for the main thing is to fill his stomach first.[2]

The Rule of Law defined and interpreted by the various Congresses of the International Commission of Jurists is the principle that seeks to emphasize that mere legality is not enough and that the broader concepts of justice as distinct from positive legal rules are embraced by the term, and insists on its more vital aspects. Taking the view of sociological jurisprudence as developed by Dean Roscoe Pound in America, the Law as conceived by the International Commission of Jurists is one that is not static. Noting the charming pattern of human relations resulting from progressive social advancement, the Rule of Law undergoes an evolutionary and expanding process to meet new and challenging circumstances. This is the analogy of social engineering which Dean Pound referred to more than once. He expects no new heaven by a mere legal

[1] With the view to defending the basic principles underlying the Rule of Law and promoting its observance throughout the world, the International Commission of Jurists held in the past, International Congresses in Athens, Greece (1955); New Delhi, India (1959) and Rio de Janeiro, Brazil (1962). Regional conferences were organized for Europe (Vienna, 1957) and Africa (Lagos, 1961).

[2] Statement from Hon. Enche Tan Siew Sin, Minister of Finance, Malaysia, 1964, quoted from Working Paper, Southeast Asian and Pacific Conference of Jurists, 1965.

principle, for the jurist is duty-bound to study the social effects of legal institutions and endeavor to make legal rules really effective for the purpose for which they were designed.[3] Law therefore should be one that is dynamic. From the outset, the International Commission of Jurists has also recognized that the applicability of the Rule of Law is not limited to a specific legal system, form of government, economic order or cultural tradition. Thus in the Conference in Athens in 1948, the Rule of Law was described as "springing from the rights of the individual developed through history in the age-old struggle of mankind for freedom." The first important step in the development of the dynamic concept of the Rule of Law was made at the Congress of Delhi in January, 1959. Reaffirming the principles expressed in Athens, the 185 participants coming from 53 countries declared that the Rule of Law is a dynamic concept for the expansion and fulfillment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized.[4] In the African Conference on the Rule of Law held at Lagos, Nigeria in 1961, the basic principles underlying the rule of law were recognized to be of universal application. What was true for some parts of the world was true for Africa provided that it was under a system of government established by the will of the people.[5]

Significantly, the Congress of the International Commission of Jurists held in Rio de Janeiro (Petropolis) in December, 1962, considered the problems of how to balance the freedom of the Executive to act effectively with the protection of the rights of the individual, what safeguards should be introduced against the abuse of power by the Executive, and what points of emphasis should be placed in the teaching of law so as to ensure the existence of a legal profession capable of performing its social function satisfactorily.

On this score, it has been recognized that as important as the independence of the judiciary is the emphasis on the role the lawyer should play in society. In the International Commission of Jurists' Congress in Rio de Janeiro in December, 1962, it was declared 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.'"[6]

[3] Pound, *Outlines of Jurisprudence.* See also the six-point plan of jurisprudence in 25 *Harv. L. Rev.* 513.

[4] *Journal of the International Commission of Jurists,* Vol. II, No. 1 (1959). *Report of the International Congress of Jurists, Athens,* 1955.

[5] *Journal of the International Commission of Jurists,* Vol. III, No. 1 (1961).

In considering the application of the Rule of Law in Southeast Asian states, there is of course the problem of the vastly divergent societies and cultures. The participants in the New Delhi conference in 1959 have recognized this circumstance[7] when they declared that viewed from the foregoing considerations, there was therefore the hope of considering in the Southeast Asian Conference in Bangkok how effectively the Rule can apply to these states and this time with special reference to the existing social, economic and cultural problems. For this purpose, there was adopted the central theme:

> How far the existing conditions in the areas under study are conducive to the maintenance and promotion of the Rule of Law in those areas; and in what ways further improvements can be effected in the observance of the Rule of Law in the context of such conditions.

The participants in the Bangkok conference were divided into three working committees, namely: (1) "The Basic Requirements of Representative Government under the Rule of Law" (2) "Economic and Social Development within the Rule of Law" and (3) "The Role of the Lawyer in a Developing Country." A special advisory committee was organized for a study of "Regional Conventions and Courts of Human Rights for Asia and the Pacific."

The Special Problems in Southeast Asian States

As it is, the countries in Southeast Asia do not form a homogeneous whole. Varied in fact are their cultures, systems of government, religions and degrees of civilization. At least most of these countries have one thing in common, that is, they have been former colonies of Western powers.[8] There are of course the Communist satellite states like the People's Republic of China, North Korea and North Vietnam. The unity of some of these countries is political rather than geographical, like Indonesia, which is composed of many scattered islands,[9] and Malaysia.[10]

[6] *Journal of the International Commission of Jurists,* Vol. IV, No. 2 (1963).

[7] *Journal of the International Commission of Jurists,* Vol. II, No. 1 (1959).

[8] As an appendix of the working papers are the country surveys of the geography, government, population, economics, social conditions, judiciary and legal profession of Afghanistan, Australia, Burma, Cambodia, Ceylon, People's Republic of China, India, Indonesia, Japan, Korea, Laos, Malaysia, New Zealand, Pakistan, the Philippines, Taiwan, Thailand and Vietnam.

[9] 3,000 volcanic islands stretched along 4,830 kilometers occupied by 96,385,348.

[10] Composed of Malaya, Singapore, Sarawak and North Borneo with a total multi-racial population of 10,187,000.

East and West Pakistan separated by 1,100 miles away between Indian territory with a total population of 93,812,000.

Discrimination and Enmity in Southeast Asia

Some writers claim that the gravest problem in Asia is not food but rather the hatred among peoples caused by discriminations and race prejudice. As it is, disunity and discord prevail in most areas caused by religion, language, race and historic prejudices. Thus even the nearest neighbors such as Vietnam, Laos and Cambodia are engaged in internal enmity. Laos, for example, has been harassed by Vietnamese forces as in Cambodia. Cambodians also hate the Laotians and the Thais. India and Pakistan have been warring against each other so much so that each regards the other as a more hateful enemy than Communist China itself.[11]

Of recent occurrence is the dispute between Malaysia and Indonesia. Even in Malaysia itself there exists the enmity between the Malay and the Chinese populations. In Japan two minorities have been harassed.[12] The southern Cantonese in China hate the northern tribes, who speak different languages, while Formosans dislike the Chinese from the mainland.[13]

To some extent there are several states in Southeast Asia where poverty does not exist on a serious scale. Australia, New Zealand, Japan, the Philippines and Ceylon may be cited as the countries where poverty and hunger are not as widespread as in other states. China and India are examples of states where the population is great, and poverty and hunger are prevalent. It is in several of these states where the problems of the Rule of Law come down to the sheer fundamentals of human existence.[14]

Characteristic Factors in Asian States

A characteristic feature in Asian states in considering the principle and application of the Rule of Law is the rigid adherence to tradition. Generally, the social structure, economy and political set-up of an Asian state are governed by tradition and custom. Custom usually plays an important role in the relationship of the individual with society. There is also the strong feeling of nationalism, which is the natural consequence of the recent freedom from colonial power. There is the desire of every Southeast Asian state which has a newly gained independence to have

[11] The Kashmir dispute which has existed for several decades is still unsettled.

[12] The Pariah Eta Caste and the Koreans.

[13] "Discrimination and Discord in Asia," *Time*, Vol. 85, No. 15, p. 20.

[14] China, the world's second largest country, is bigger than all of Europe with a population of an estimated 700 million. India has reached a population of 434,807,000 in 1961 with an area of 1,259,983 square miles.

equality with the Western powers. Such countries desire to become modern but still cling to their inherent traditional cultural background.

A phenomenon which is a counterpart of the growth of the middle class in Europe is the emergence of a distinct intelligentsia group. It was a similar type of educated class that spearheaded political and social reforms during the 17th, 18th and 19th centuries in Europe. The intelligensia in Southeast Asia have usually been educated either in Europe or the United States or even in their home universities, where they have had access to foreign political ideas. This new group of intellectuals has recognized the grave problems of poverty, ignorance and injustice. Although their political ideologies spring from different environments, these intellectuals do exert a great influence on the political life of their respective states. Most of the political leaders of the Southeast Asian states come from them.

The Language Problem

One of the main causes of disunity in Asia is the existence of about 3,000 languages and dialects. Furthermore, under their rulers, the languages used in these Southeast Asian states were those of the colonial powers. At any rate, the knowledge of the language was an essential requisite for entering the government service and society in general. The result was that the native language, the mother tongue, was neglected although it cannot be denied that it was the language of the colonial power that at least promoted the unity of many of the states which usually had several regional dialects.

Upon attainment of independence, however, there arose the revival of the use of their mother tongues. This sudden change, however, brought forth some problems. For one, the selection of an official national language among several dialects caused some animosities. The 1950 Constitution of India provided, for example, that Hindi and English would be the official languages of North India and the Congress Party leaders for the first 15 years and thereafter Hindi alone would be the official tongue. After the lapse of 15 years, which was in January, 1965, South India's non-Hindi speaking people protested. In fact riots flared up and cabinet ministers threatened to resign although the pro-Hindi supporters insisted on following the constitution.[15]

Ironically, there has also been a hostile attitude towards the foreign languages even if they have acquired international status and recogni-

[15] To pacify the nation, India's Prime Minister Lal Bahadur Shastri promised English would still be the associate language.

tion. As it is, it might adversely affect the communication of scientific, political, social and economic ideas.[16]

The Influence of Religion in Developing States

There is no question that religion has a very strong influence on the social and political life of the people in the Southeast Asian states.[17] Understandably, the actions and reactions of the average Asian must be understood in the light of the strong religious influence which is very vital to his social and political life.

Despite the Oriental characteristics of passivity and non-resistance, many of the Southeast Asian states today are hotbeds of national and even international tensions as indicated by the events in India, Pakistan, Ceylon, Burma, Indonesia, Malaysia, Laos, Cambodia, Vietnam and Korea. Hinduism's caste system, Buddhism's ambiguous attitude towards realistic situations and Islam's hatred of infidels have caused continuous tensions. Even the passive Buddhists proved to be violent when they meddled in politics.

The Problems of the Rule of Law in Southeast Asia

With their newly acquired freedom, the people in the Southeast Asian states expected increased political rights and demanded advanced social and economic conditions enjoyed in the developed Western states. Thus political leaders in many of the states, in their desire to be in power, generously promised everything attractive to the masses. Very little concern was directed, however, to the economic stability of the countries. Political freedom was no sooner enjoyed than the people had to face the inevitable economic conditions. It is true that most of these developing states were trained fully well to adopt the democratic way of life. Constitutional liberties are guaranteed but with the advent of independence, democratic ideals have broken down in many of the Southeast Asian states and have in one way or another been replaced by dictatorships or military rule.[18]

[16] The situation in Japan and Thailand is quite different. Having been always independent, they have maintained their national languages and still encourage English and other international languages.

[17] The predominant religions are Buddhism, Hinduism, Islamism, and Christianity. In China, Confucianism is predominant as an ethical code.

[18] In Burma, democratic processes have not been observed ever since the military *coup d' etat* in 1962. (See "Military Rule in Burma," *Bulletin of the International Commission of Jurists,* No. 15, April 1963, based on the report of Edward St. John, Q.C.)

Pakistan has a very authoritarian government. At the moment the army is the most important single political force in the Islamic republic since its leader is the chief of state. Military ministers and advisers are at every level of the civilian government. The Press and Publication Ordinance passed in 1960 and amended in 1963 imposed restrictions on the press. (*Bulletin of the International Commission of Jurists,* No. 17 Sec. 1963)

After having been a French protectorate since 1863, the Kingdom of Cambodia became independent. With Prince Sorodom Sihanouk as President of the Popular Socialist Community, Cambodia pursues a policy of moderate socialism. There is an express guarantee of freedom of the press, but the Ministry of Information may withdraw at any time any licennse to print. The art of public criticisms is not highly developed in Cambodia, and adverse criticisms are met with drastic punishment.

In Ceylon, there are no guarantees of fundamental rights embodied in the constitution except some references in Section 29. One violation of fundamental rights in Ceylon is the instruction of a retroactive legislation relating to offenses or penalties. The criminal law, General Provisions Act, enacted on February 18, 1962, besides its retroactive effect, also provided for arrest without warrant. (See *Journal of the International Commission of Jurists,* Vol. IV, No. 15, April 1963.)

In Indonesia, there is the "guided democracy" of President Sukarno, who opposes the existence of political parties and the majority rule. The 1945 constitution invests the executive with almost unlimited powers. No regular elections have occurred in Indonesia since 1950. With new measures under the Sukarno regime, the press has been subjected to severe controls by arrests of journalists and bans on newspapers. The press is subject to severe censorship. Indonesia does not recognize the *habeas corpus* principle.

Although the constitution in Korea guarantees basic civil liberties, there have been frequent charges that the Paek government is authoritarian and merely a dictatorship in the guise of democracy. Actually the military dictatorship reigns with continuous martial law. (*Bulletin of International Commission of Jurists,* No. 13, May 1962.)

Thailand, which has always been free from colonial control, abrogated in 1952 its constitution guaranteeing civil liberties. It was stated *inter alia* that all persons enjoyed full liberty of property, speech, writing, publication, education, public meeting and association, which were all however "subjected to provisions of the law." However, the said guarantees may be exercised but not against the "Nation, the Faith, the Crown and the Constitution." This practically imposed a sweeping limitation on the exercise of individual rights. In fact, all regimes since 1932 have censored the press. The Press Act of 1941 empowered the Director General of the Police to prohibit publications of any material he may consider contrary to public interest.

One of the more important causes of abandonment of democracy in some Asian states is the non-realization of the rosy promises of political leaders. In their attempt to gain and to hold on to that power, political leaders usually paint bright futures for their countries without considering the possibility of their realization within the means and capabilities of the state resources. As it is, democracy has proven to be a luxury for the teeming millions; on the other hand, some economic progress has been achieved in several of the dictatorial states. It is unquestioned that economic progress has been slow in Southeast Asia, due to the lack of technical skill, absence of proper planning, lack of sufficient capital, political interference in almost all fields of endeavor, and inefficiency, incompetence and corruption in the government. India, which is said to be the

world's largest democracy, is beset by corruption in the civil service, while the Philippines, trained under American democracy, has been called a "tropical Tammy."[19]

Population is considered as the gravest problem that faces most Asian states today. Whatever economic gains Asian states have made towards economic progress, these are not enough to offset the tremendous increase in population.[20]

Another principal reason why democracy has not taken firm roots in many of the Southeast Asian states is the absence of an effective and responsible opposition. Used to colonial rule and to an atmosphere of faithful obedience to royalty, effective political opposition parties with adequate protection from the law are not fully developed. It is very common for the political party in power to try to annihilate, if not absorb, the political minority. The existence of a healthy opposition as an effective safeguard against abuse of political power has not been fully realized.[21]

It is significant to note that in some areas in Southeast Asia, there is a lack of confidence in law itself. For example, in Korea, the people regard law as an instrument used by the ruler to enhance their subjugation. The result is that instead of welcoming the Rule of Law, the Koreans evade it. While it is true that in some other areas the colonial powers have promulgated laws for the benefit of the people and for the preservation of peace, it is also admitted that many other laws were enforced to protect monopolies and trading interests and to maintain the *status quo*

There is no question that fundamental freedoms are not fully exercised in Vietnam. This is due to the state of war.

Communist China, North Korea and North Vietnam have governments based on the Communist philosophy of law (See *Law in Communist China.* Father Andre Bonnichon, International Commission of Jurists Pamphlet, the Hague, and "Ten Years of the Chinese People's Constitution," ***Bulletin of the International Commission of Jurists,*** No. 20.)

Tibet continues to live under Chinese domination and a forcibly imposed ideology and social order. Hunger, forced labor and deportation compelled thousands of Tibetans to flee. The most fundamental human rights are violated every day. (*Bulletin of the International Commission of Jurists,* No. 13, May 1962.)

Afghanistan has a constitution (1931) with a limited bill of rights. In point of fact individuals have time and again been jailed on the flimsiest pretexts and remained locked even indefinitely due to the wide police powers of executive agencies.

[19] "The Worldwide Status of Democracy," *Time,* April 23, 1965.

[20] The 18 states in Southeast Asia have a total population of 1,514,767,690.

[21] India has been considered as a one-party state. In Indonesia, the absence of an effective opposition resulted in the abrogation of the 1950 constitution with Presidennt Sukarno as president for life. The "Burmese Way of Socialism" fails to recognize the right of minorities to express themselves against the excesses of the government. The authoritarian nature of the regime of Ngo Diem rendered possible by the absence of cohesive opposition parties led to the overthrow of his government.

even after independence. It is not surprising therefore that people in Southeast Asia maintain this distrustful attitude towards law. In this regard it is very necessary also to improve the image of the lawyers in these areas. Hsun Tsu, a third century Chinese philosopher, expressed the Asian view on law as follows:

> There is a ruling man but not a ruling regulation. Law cannot stand alone and regulation cannot be exercised by itself. By getting the right man, it lasts; by losing the right man, it perishes. Law is the tip of government and the great man is the source of governing. Therefore, by having the great man (in control), although the law is incomplete, it will be sufficient to cover everything. Without a great man, even if the law is complete the sequence of its application will be in disorder and will be unable to meet the change of events, and will lead to disorder. (Quoted from Working Paper, *op. cit.,* p. 16)

Another cause of the breakdown of the Rule of Law in Southeast Asia is the lack of sufficient education of the masses. Voters still lack political consciousness. They vote for candidates not on the merits of the political ideals they represent but more on race, religion, personal friendship or personal considerations. With bribery, intimidation and undue influence prevailing during elections, the result is that the wrong man is voted into power.

Need for Representative Government

Aware of all the problems that beset Southeast Asia, the 105 jurists coming from 16 countries of the Southeast Asian and Pacific region who assembled in Bangkok from February 15 to 19, 1965, under the auspices of the International Commission of Jurists have concluded and declared that the Rule of Law in this region can be attained and will reach its highest expression and fullest realization under a representative government freely chosen by universal suffrage.

In considering the basic requirements of the Rule of Law, the jurists in conference in Bangkok have agreed that one of the most effective means of protecting the individual from arbitrary government and his enjoyment of the dignity of man is a representative government. By representative government is meant a government deriving its power and authority from the people, which power and authority are exercised through representatives chosen in free periodic elections characterized by universal adult suffrage. There must also be freedom of expression to ensure the development of an informed and responsible electorate. Representative government also implies the freedom to form opposition parties, able and free to pronounce on the policies of the government. To enable representative government to yield the best results, the people should not only be literate but must also have political and civic consciousness. It is also

essential for the effective operation of the Rule of Law that there should be an efficient, honest and impartial civil service.[22]

Economic and Social Development

The enjoyment of political rights, however, is premised on the economic and social security of the individual. For the continued existence of hunger, poverty and unemployment makes representative government impossible. The conference of jurists thus reiterated the principle of the Universal Declaration of Human Rights that the economic, social and cultural rights of the individual include the right to work, free choice of employment, protection against unemployment, just and favorable conditions of work and remuneration. While it is true that some of the economic, social and cultural standards set forth above have been given sanctions in constitutional and statutory provisions in many states, there is a need to progressively enact appropriate legislation and to develop the legal institutions and procedures whereby these standards may be maintained and enforced within a rule of law.

It is also essential for economic and social development under the Rule of Law that inequality of opportunity arising from birth or wealth, discrimination arising from ethnic, religious, linguistic, regional, or communal factors be overcome. Moreover, political, racial, social, religious and other types of intolerance have impeded economic progress in Asia. In the case of the developing countries the jurists saw the need for some measure of intervention in property rights such as land reforms. Intervention in this respect may be in the form of qualifications to own land, provision for the maximum utilization of land, facilities for the granting of credit on advantageous terms, the issuance of land titles, and the strengthening of the right of association of rural people for their social, political, economic and cultural advancement in accordance with the Rule of Law. To inspire confidence and to reduce the possibility of maladministration, full accounts of such projects should be the subject of independent and expert examination and the reports thereon regularly submitted to the legislature.

Taking cognizance of the situation in several developing states, the conferring jurists concluded that nationalization of private enterprises by a democratically elected government, if necessary in the public interest, is not contrary to the Rule of Law. Said measures, however, must be in accordance with the declared policy of the legislature and must be implemented in a manner consistent with the Rule of Law.

[22] Conclusions of Committee I: Representative Government. Bangkok Conference.

The existence of wide corruption in the public service has also been the concern of the jurists. There is no question that graft and corruption undermine the confidence of the people in the government and hinder the economic and social progress of nations. It also leads to miscarriage of justice, thereby affecting the operation of the Rule of Law. In this connection the appointment, promotion, dismissal and disciplinary control of public servants must be determined without discrimination on religious, racial, linguistic or other grounds which may be extraneous to the proper functioning of the public Service.

Finally, the jurists have recognized the beneficial experience gained in Scandinavia and New Zealand and thereby suggested the adoption of the "Ombudsman" as a means of facilitating the correction of administrative errors and maladministration.[23]

The Role of the Lawyer in a Developing Country

The conference of jurists also fully recognized that lawyers should be a vital and courageous element in a developing country and that they should always be conscious of the social, economic and cultural aspirations of the people to the realization of which they should commit their skills and techniques.

Indeed there is a need to stress at this stage the principle that law and lawyers are instruments of social order. Through law, society is preserved and man is enabled to live and love and labor in peace.

In a developing country, the law must be used as an instrument to preserve and stimulate an evolving order, capable of adapting itself to a changing world. Amidst the presence of threats, poverty, lack of opportunity and gross inequality, there is a need for an evolutionary change in the attitude towards law. Statesmen and jurists must find means to advance the economic and social development of their countries, while preserving, of course, the freedoms which are the cornerstones of a free society under the Rule of Law.

[23] The concept of the "Ombudsman" or the "Grievance Man" was developed in the Scandinavian countries and New Zealand. In New Zealand, an office headed by the Parliamentary Commissioner for Investigations takes charge of complaints or abuses committed by executive officials. (See "Ombudsman in New Zealand," *Journal of International Commission of Jurists*, Vol. IV, Nos. 1 and 2, and "Progressive Reforms in New Zealand," *Bulletin of International Commission of Jurists*, No. 19, May 1964.)

The basic principles of the "Ombudsman" are complete independence from the executive and full and untrammelled power to investigate complaints against administrative actions of the executive, including access to files and hearing of witnesses.

The aforesaid problems require the lawyers to play a vital role in their solution. Due to his special knowledge and study, the lawyer is the best individual prepared to recognize and understand these problems in perspective and to devise solutions. In terms of the policy science approach advocated in the Yale Law School by Lasswell and McDougal, it is the systematic thinking or investigation about present-day social values, or desirable objects of human desires considered the necessary tools in the implementation of such social values which a democratic country must set up as a goal and pursue with all its resources.[24]

This juristic school utilizes observation and management of the social values that are useful in the legal ordering of a community. Policy science jurisprudence is essentially a reaction to the confusion resulting from the vague and narrow concept of the role of law as a mere body of technical doctrines or simply as a set of judicial precedents.[25]

Indeed, the lawyer in a developing country must go beyond the narrower confines of the law and gain understanding of the society in which he lives, so that he can play his part in its advancement.[25]

The lawyer in the developing countries has the moral obligation of upholding the Rule of Law in whatever capacity he holds even if it brings him into disfavour with the state authorities. In this respect, lawyers should be available for the defense of the civil and political rights of individuals. Such readiness involves the obligation to take an active part in effectively aiding the poor and the destitute.

The lawyer should further secure the repeal or amendment of laws which are unjust or out of harmony with the needs and aspirations of the people and to review legislation to ensure that they are in accord with the Rule of Law.

The lawyer should also assist in the work of administration, in order to see to it that laws are executed with due respect for the rights of the individual and strive to assure judicial review of all administrative acts which affect human rights.

[24] "Legal Education and Public Policy: Professional Training in the Public Interest," 52 *Yale Law Journal* 207.

[25] The Policy Science School asserts that there is an inability of policy makers to deal with clarity or set up the truly important social values as means for attaining general peace and security. There is also the failure or refusal of law schools to train their students on the importance of public interest. The students must be trained on the importance of clear ultimate goals or ends. (See McDougal and Leighton, "The Rights of Man in the World Community; Constitutional Illusions versus Rational Action," 59 *Yale Law Journal* 108.)

[26] See Conclusions of the Rio de Janeiro Congress, "Role of Lawyers in a Changing World."

The jurists also urge lawyers to be actively concerned with legal education and the provision of adequate incentives for teachers of law. The Rule of Law, as a dynamic concept, requires that legal education should bear a realistic relation to the social and economic conditions obtaining in developing states. Lawyers should endeavor to enlist the aid of their professional associations to secure the acceptance by their members of the ideals so concluded.[27]

The Regional Convention of Human Rights for Asia

Up to this day, the Universal Declaration of Human Rights adopted in 1948 by the United Nations has not yet acquired the status of a binding international convention. The principles therein, however, have been recognized in most states as standards required for the protection of human rights. In fact, many of its provisions have been incorporated in state constitutions and have received judicial recognition.

Since the application of the Universal Declaration of Human Rights on a world-wide basis has been slow and difficult, the jurists of the world saw a need for setting up regional conventions based on the Universal Declaration itself. Thus on November 4, 1950, fifteen European states signed in Rome the European Convention on the Protection of Human Rights and Fundamental Freedoms providing for the European Commission of Human Rights and the European Court. The convention came into force on September 3, 1953, and became applicable as of May 18, 1954. It offers

[27] Conclusion of Committee III: Role of the Lawyer in a Developing Country.

In connection with the desire to have a realistic legal education in relation to the social and economic conditions obtaining in the developing states, the committees resolved to request the International Commission of Jurists to consider the feasibility of establishing a Southeast Asian and Pacific Law Institute to (1) provide a center where training programs may be conducted for teachers of law in the region, (2) examine existing methods of legal education and teaching techniques, (3) provide a clearing house for information as to common problems and experience in the region and (4) encourage and facilitate research into the vital problems of social and legal adjustment posed by the impact of Western legal institutions. (See Resolutions of Committee III; The Role of the Lawyer in a Developinng Country.)

It may be noted that an association of Law Teachers and Schools in Southeast Asia was organized in the University of Singapore. The Philippine delegates who attended the conference in the University of Singapore were Dean Vicente Abad Santos, College of Law, University of the Philippines; Prof. Bienvenido Ambion of the same college; Prof. Enrique Fernando of the Code Commission; Dean Crispin Baizas, Institute of Law, Far Eastern University; Prof. Enrique Syquia, College of Law, University of Santo Tomas and the author. The formal organization of the association together with that of the association of law school professors and teachers in Southeast Asia was held in July, 1963, attended by Prof. Troadio Quiazon of the College of Law, University of the Philippines.

within its member countries adequate safeguards for the rights normally recognized in the legal systems of the participating nations.[28]

The jurisdiction of the European Court extends to all cases concerning the interpretation and application of the convention referred to by member states, but the individual can only appeal to the Commission in the exercise of his right of petition.[29]

At the African Conference on the Rule of Law held in Lagos in 1961, a regional convention of human rights for Africa was also proposed.[30]

[28] The European Commission of Human Rights was established in May, 1954, after the necessary number of ratifications had been deposited with the Council of Europe. (See "Procedure and Jurisprudence of the European Commission of Human Rights, *Journal of the International Commission of Jurists*, Vol. I, No. 2, p. 198.) Under the rules the Commission has jurisdiction to hear applications by member states or individuals of violation of rights protected by the European Convention, or European "Bill of Rights," as Prof. C.H.M. Waldock, Chairman of the Commission, calls it. A complaint may be lodged only against member states, but non-member states and their nationals may file complaints. "The Protection of Human Rights and the Rule of Law on the International Level," *Bulletin of the International Commission of Jurists*, No. 8, December, 1958.

After the conditions for the setting up of the European Court had been fulfilled (8 ratifications of member states), the Consultative Assembly of the Council of Europe elected 15 judges to compose the Court, namely: Kiemal Fikret Arik, Professor at the University of Ankara; Einar Arnalds, President of the Tribunal at Reykjavik; Frederick Maria Baron van Asbeck, Professor at the University of Leyden; Giorgio Balladore Pallieri, Professor at the University of Milan; Rene Cassin, Vice President of the French Conseil de Etat; Ake Holmback, Professor at the University of Uppsala; Richard McDonigal, Barrister Dublin; Lord McNail, former President of the International Court of Justice; Georges Marikadis, Professor at the University of Athens; Herman Mosler, Professor at the University of Heidelberg; Eugene Redenburg, President of the Tribunal at Luxumburg; Henry Rolin, Professor at the University of Brussels; Alf N. Ch. Ross, Professor at the University of Copenhagen; Alfred Verdross, Professor at the University of Vienna; and Terje Wold, President of the Supreme Court of Norway.

As of 1961, over 1,000 petitions have been filed with the Commission and 715 decisions have been handed down. (Philippe Comte, "The Application of the European Convention of Human Rights," *Journal of the International Commission* of Jurists. Vol. IV, No. 1)

[29] Art. 45 of the Convention. A direct action by an individual may not be filed with the Court, but he can lodge his complaint with the Commission, which attempts to arrive at a friendly settlement. Otherwise, the Commission or any of the parties may appeal to the Court. ("The European Court of Human Rights," *Bulletin of the International Commission of Jurists*, Nos. 7 and 9) The first case brought before and decided by, the Court was *In re Lawless*, concerning the validity of an administrative detention measure by the Republic of Ireland. (See "Judgment of the European Court of Human Rights," *Journal of the International Commission of Jurists*, Vol. VIII, No. 2.)

[30] See "Law of Lagos," *Journal of International Commission of Jurists*, Vol. III, No. 1.

Two other projects for a regional convention of human rights are being proposed for the American states.[31]

Considering the possibility of sponsoring also a convention of human rights in Asia, an advisory group was created during the regional conference in Bangkok.[32]

With the desire of protecting individual human rights and solving problems arising from national, racial, religious, linguistic or other minority issues, the advisory group recommended to the International Commission of Jurists the adoption of a regional Southeast Asian and Pacific Convention for the Protection of Political and Civil Rights. Such convention, of course, will only be open to such states as are willing to do so.

The advisory group also urged all lawyers of the region to press upon their respective governments the importance of such a convention, within the framework of the United Nations. As an immediate measure to effectively safeguard human rights throughout the world, the group also suggested the establishment of the office of United Nations High Commissioner for Human Rights, with status analogous to the United Nations Commissioner for Refugees.

[31] Drafts have already been proposed for said region by the Organization of American States and the organization "Freedom through Law." (Comparative Texts of the General American Draft Convention, Inter-American Draft Convention and the American Convention, International Commission of Jurists, Geneva)

[32] Among the members of this advisory group was Senator Jose Diokno.