

RECENT DOCUMENT

DECLARATION OF BANGKOK: CONCLUSIONS AND RESOLUTIONS OF THE SOUTH-EAST ASIAN AND PACIFIC CONFERENCE OF JURISTS *

DECLARATION OF BANGKOK

This Conference of 105 jurists from 16 countries of the South-East Asian and Pacific Region, assembled in Bangkok from February 15th to 19th, 1965, under the auspices of the International Commission of Jurists has reached these conclusions:

It considers that, given peace and stability, there are no intrinsic factors in the Region which make the ultimate establishment, maintenance and promotion of the Rule of Law incapable of attainment; that the Rule of Law can only reach its highest expression and fullest realization under a representative government freely chosen by universal adult suffrage; and that the Rule of Law requires effective machinery for the protection of fundamental rights and freedoms;

It recognizes that the Rule of Law and representative government are endangered by hunger, poverty and unemployment; that, in order to achieve social, economic and cultural development, sound economic planning is essential; that, in particular, measures of land reform to assure fairer distribution and its most economic utilization may be necessary; that successful planning depends on the maintenance of administrative efficiency and the elimination of corruption at political and administrative levels; that proper means of redress should be available where administrative wrongs are committed; and that, in the light of the experience gained in Scandinavia and New Zealand, consideration should be given to the Ombudsman concept as a means of individual redress and the improvement of administration;

It affirms that lawyers should be a vital and courageous element in a developing community; 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;

* Editor's Note: The Conference was held in Bangkok on February 15-19, 1965 under the sponsorship of the International Commission of Jurists. The Philippine Delegation was composed of Solicitor General Arturo Alafritz, Justice Roberto Concepcion, Senator Jose W. Diokno, Ambassador Melquiades J. Gamboa, Dean Vicente Abad Santos, Dean Jeremias Montemayor, and Solicitor Jorge Coquia.

It believes that the conclusion of a Regional Convention on Human Rights among States in the Region should be considered as a means of making an important contribution to individual human rights and to the solution of national, racial, religious and other minority issues; and that the establishment of the office of United Nations High Commissioner for Human Rights would be a valuable immediate measure to safeguard effectively human rights in accordance with the Universal Declaration of Human Rights;

It reaffirms the *Act of Athens*, the *Declaration of Delhi*, the *Law of Lagos* and the *Resolution of Rio*;

AND NOW SOLEMNLY

Adopts the Conclusions and Resolutions annexed to this Declaration.

This Declaration shall be known as the Declaration of Bangkok.

Done at Bangkok, this 19th day of February, 1965.

CONCLUSIONS

COMMITTEE I

BASIC REQUIREMENTS OF REPRESENTATIVE GOVERNMENT UNDER THE RULE OF LAW

Recalling and reaffirming the definition of the Rule of Law adopted by the International Commission of Jurists at the New Delhi Congress in 1959, which reads:

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;

Believing that the protection of the individual from arbitrary government and his enjoyment of the dignity of man are best assured by a representative government under the Rule of Law;

And with the object of setting out and defining the basic requirements of, and considerations affecting, representative government under the Rule of Law;

This Committee has reached the following Conclusions in relation to such requirements:

- CLAUSE I The Rule of Law can only reach its highest expression and fullest realization under representative government.
- CLAUSE II By representative government is meant a government deriving its power and authority from the people, which power and authority are exercised through representatives freely chosen and responsible to them.
- CLAUSE III Free periodic elections are therefore important to representative government. Such elections should be based on universal and equal adult suffrage and should be held by secret ballot and under such conditions that the right to vote is exercised without hindrance or pressure. Where a legislature is elected by districts, there should be a periodic re-distribution of seats or districts so as to ensure as far as practicable that each individual vote has the same value. It is also necessary to ensure that election expenses of candidates are regulated in such a manner and to such an extent as may be necessary to ensure that elections are both free and fair.
- CLAUSE IV No adult citizen should by reason of race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, education, status or birth be deprived of the right to be a candidate at any election, to seek votes, or to cast this vote for any candidate.
- CLAUSE V Freedom of expression through the press and other media of communication is an essential element of free elections and is also necessary to ensure the development of an informed and responsible electorate.
- CLAUSE VI Representative government implies the right within the law and as a matter of accepted practice to form an opposition party or parties able and free to pronounce on the policies of the government, provided their policies and actions are not directed towards the destruction of representative government and the Rule of Law.
- CLAUSE VII Illiteracy is an impediment to representative government reaching its highest expression and fullest reali-

zation. It is therefore the duty of the State to provide compulsory free education for all children and free education for all illiterate adults up to such standard as is necessary ultimately to remove such impediment.

CLAUSE VIII To enable representative government to yield the best results, the people should not only be literate, but should have a proper understanding and appreciation of the principles of democracy, the functions of the different branches of the government and the rights and duties of the citizen vis-a-vis the State. Civic education through schools and through all mass media of communication is therefore a vital factor for ensuring the existence of an informed and responsible electorate.

CLAUSE IX It is essential for the effective operation of the Rule of Law that there should be an efficient, honest and impartial civil service.

CLAUSE X This Committee has reached the following further Conclusions relating to the guarantee of individual freedom and dignity within the framework of a representative government:

- (1) In a State in which the Rule of Law prevails there should be effective machinery for the protection of fundamental rights and freedoms, whether or not these rights and freedoms are guaranteed by a written constitution.
- (2) In countries where the safeguards afforded by well-established constitutional conventions and traditions are inadequate, it is desirable that the rights guaranteed and the judicial procedures to enforce them should be incorporated in a written constitution.
- (3) While governments should of their own volition refrain from action infringing fundamental rights and freedoms, the ultimate determination as to whether the law or an executive or administrative act infringes those rights and freedoms should be vested in the Courts.

- (4) The ultimate protection of the individual in a society governed by the Rule of Law depends upon the existence of an enlightened, independent and courageous Judiciary, and upon adequate provision for the speedy and effective administration of justice.

CLAUSE XI In view of the fact that some governments in the Region often have recourse to preventive detention, this Committee has found it necessary to reaffirm, reiterate and extend the Conclusions of Lagos relating to preventive detention in the following terms:

- (1) Save during a period of public emergency threatening the life of the nation, no person of sound mind shall be deprived of his liberty except upon a charge of a specific criminal offence, and preventive detention without trial shall be contrary to the Rule of Law.
- (2) During such period of public emergency, legislation often authorizes preventive detention of an individual if the Executive finds that public security so requires. Such legislation should provide the individual with safeguards against continuing arbitrary confinement by requiring a prompt administrative hearing and decision upon the need and justification for detention, with a right to judicial review as to the need and justification for such detention and with the right to representation by counsel at all stages. It should be required that any declaration of public emergency by the Executive be forthwith reported to, and be subject to ratification by, the Legislature. Moreover, both the declaration of public emergency and any consequent detention of individuals should, except in time of war, be effective only for a specified and limited period of time (not exceeding six months).
- (3) Extension of the period of public emergency should be effected by the Legislature only after careful and deliberate consideration of the necessity therefor. Finally, during any period of public emergency the Executive should only take such

measures as are reasonably justifiable for the purpose of dealing with the situation which exists during that period.

- (4) Even where the preventive detention of an individual is permitted by law by reason of a public emergency threatening the life of the nation, it is essential that the Executive should not act arbitrarily and that it should forthwith supply the person detained with the grounds for his detention and particulars thereof.
- (5) Where it is necessary in order to prevent hardship, the State should support the dependents of a person placed under preventive detention.

CLAUSE XII Finally, this Committee, having anxiously considered the various factors which challenge the Rule of Law in the Region, wishes to add that in its view there are no intrinsic factors in the area which make the ultimate establishment, maintenance and promotion of representative government under the Rule of Law incapable of attainment.

CONCLUSIONS

COMMITTEE II

Economic and Social Development within the Rule of Law

PREAMBLE

Considering that the Rule of Law requires the establishment and observance of certain standards that recognize and foster not only the political rights of the individual but also his economic, social and cultural security;

Realizing that the Rule of Law is endangered by the continued existence of hunger, poverty and unemployment, which tend to make a truly representative form of government impossible and promote the emergence of systems of government opposed to the principles of the Rule of Law;

Believing that the lasting and effective way of reaching the social and economic goals necessary to the smooth operation of the Rule of Law is by methods and procedures that conform to its principles; and

Bearing in mind, in consonance with the Universal Declaration of Human Rights, that the economic, social and cultural rights of the individual include the right to work, to free choice of employment, to protection against unemployment, to just and favourable conditions of work and remuneration which will ensure to the worker and his family an existence worthy of human dignity, to security and protection, and to the satisfaction and enrichment of his intellectual and cultural faculties;

The Committee has arrived at the following conclusions regarding social, economic and cultural development in the Region:

CLAUSE I Some of the economic, social and cultural standards set forth above have already been given legal force and sanction by constitutional and statutory provisions; however, there is a need progressively to enact the appropriate legislation and to develop the legal institutions and procedures whereby these standards may be maintained and enforced within the Rule of Law.

Economic, social and cultural rights should also be safeguarded on the international level by relevant conventions of the United Nations and its specialized agencies. Governments are urged to co-operate in the framing of such conventions and to ratify them.

CLAUSE II It is essential to economic and social development under the Rule of Law that inequality of opportunity arising from birth or wealth, and discrimination arising from ethnic, religious, linguistic, regional or communal factors be overcome.

Political, racial, social, religious and other types of intolerance impede the unified effort required for economic progress. Governments should therefore promote and encourage a spirit of tolerance among all sections of the community.

CLAUSE III It is recognized in general, and more particularly in the case of the developing countries of the Region, that in order to achieve greater economic and social benefits for the individual some measure of intervention in property rights may become necessary, but such intervention should never be greater than is absolutely necessary in the public interest and should be subject to safeguards afforded by the Rule of Law.

- CLAUSE IV The land problem is one of the most fundamental and complicated problems in the Region. Consideration to appropriate land reform programmes must therefore be given high priority.
- CLAUSE V While no specific methods of land reform can be suggested by the Committee which are uniformly appropriate for all communities, it is recognized that such methods may properly include qualification of the right to own or to succeed to land, provision for the maximum utilization of land, facilities for the granting of credit on advantageous terms, the issuance of land titles, the strengthening of the right of association of rural people for their political, economic, social and cultural advancement, and support for rural development in general. These and other measures of land reform must, however, conform to the principles and procedures of the Rule of Law.
- CLAUSE VI Sound economic planning is essential to the social and economic development of the countries in the Region, but the Rule of Law requires that both the ends and the means embodied in such planning derive from and reflect the ideas, the needs and the aspirations of the people themselves.
- CLAUSE VII To inspire confidence and to reduce the possibility of maladministration, especially in regard to capital investment in public economic development projects, it is recommended that full accounts on such projects be the subject of independent and expert examination, and that reports thereon be regularly submitted to the Legislature.
- CLAUSE VIII Nationalization of private enterprises by a democratically elected government when necessary in the public interest is not contrary to the Rule of Law. However, such nationalization should be carried out in accordance with principles laid down by the Legislature and in a manner consistent with the Rule of Law, including the payment of fair and reasonable compensation as determined by an independent tribunal. The same considerations should apply to other governmental action taken with similar purpose and effect.

- CLAUSE IX It is in accord with the Rule of Law to adopt, when necessary in the interest of public welfare, fair and reasonable measures with respect to price control, state trading, control of private trade and anti-trust legislation.
- CLAUSE X In every developing country it is desirable in the interest of social and economic peace that there be legal machinery for the peaceful settlement of labour disputes. It is recommended that, where necessary, States which have ratified the relevant conventions of the International Labour Organization implement the same by appropriate legislation.
- CLAUSE XI The effective operation of the Rule of Law in developing countries requires an efficient administration, adequately equipped to cope with vast and complex social and economic problems.
- Corruption among public officials not only undermines confidence in the public service, but it is a positive hindrance to economic and social progress. It also leads to miscarriage of justice, thereby affecting the operation of the Rule of Law. These considerations apply with at least equal force to Ministers and members of the Government.
- It is essential, particularly in multi-racial or multi-religious developing societies of the Region, that the appointment, promotion, dismissal and disciplinary control of public servants be determined without discrimination on religious, racial, linguistic or other grounds which may be extraneous to the proper functioning of the public service.
- CLAUSE XII In order to minimize infringements of the rights and freedoms of the individual, particularly in developing countries where far-reaching administrative decisions are necessary, such decisions affecting these rights and freedoms should be supported by stated reasons and be subject to review. The Conclusions of Committee II of the New Delhi Congress (Clauses IV and V), and of Committee II (A and B) of the Rio Congress of the International Commission of Jurists are reaffirmed.

CLAUSE XIII Full observance of the Rule of Law requires that the Government be liable for wrongs committed by it or its servants in the execution or the purported execution of public duties. The relevant conclusion of the New Delhi Congress (Committee I, Clause VI) is reaffirmed.

CLAUSE XIV In the light of the experience gained in Scandinavia and New Zealand, it is recommended that nations of the Region should examine the possibility of adopting the "Ombudsman" concept as a means of facilitating the correction of administrative errors and minimizing the possibility of maladministration.

While adaptation to local circumstances will be necessary, it is understood that the basic principles underlying such a concept are: the complete independence of the office from the Executive; its full and untrammelled power, including access to files and the hearing of witnesses, to investigate complaints against administrative action of the Executive; and the limitation of its power to recommendations addressed to competent legislative and executive organs.

CONCLUSIONS

COMMITTEE III

The Role of the Lawyer in a Developing Country

PREAMBLE

Law and lawyers are instruments of social order. Without law, the evolution of mankind to its present stage of development would not have been possible. Through the law, society is preserved and man is enabled to live and love and labour in peace from generation to generation.

The law is not negative and unchanging. It should be not a yoke, but a light harness holding society loosely but firmly together, so that it may move freely forward. Order is important, but it must be an evolving order; the law must be firm yet flexible, and capable of adapting itself to a changing world. This is especially so in a developing country.

Poverty, lack of opportunity and gross inequality in the Region require leaders who understand the need for evolutionary change, so that every citizen may look to a future in which each may realise his full potential as an individual in a free society. The great need of the peoples of the Region requires action, lest freedom be utterly forfeited. Beset by threats from the right or left, the statesman must find means to advance the economic and social development of his country and countrymen whilst preserving or establishing the institutions and the freedoms which are the cornerstones of a free society under the Rule of Law.

These problems require the lawyer to play a vital role in their solution. They cannot be solved by lawyers alone. But the life of man in society and his relationships with others are the subjects of the lawyer's special knowledge and study; in many parts of the Region lawyers are particularly well equipped to see these problems in perspective, and to devise solutions.

The lawyer must look beyond the narrower confines of the law, and gain understanding of the society in which he lives, so that he may play his part in its advancement. The inspiration of the lawyers of the world, particularly those of the Region, with the ideals proclaimed at the Rio Congress in the Conclusions of Committee III, "The Role of Lawyers in a Changing World," could play a large part in moulding free societies of the future, able to promote the full dignity of man, and to withstand the perils and dangers of the changing times.

This Committee therefore reaffirms and reiterates the Conclusions of the Rio Congress, and adopts the following further Conclusions with particular reference to developing societies:

- CLAUSE I The lawyer has a deep moral obligation to uphold and advance the Rule of Law in whatever sphere he may be engaged or in which he has influence, and he should fulfill that obligation even if it brings him into disfavour with authority or is contrary to current political pressures. He can give effect to many of the principles underlying the Rule of Law in his daily work; for the rest, it is his responsibility as a citizen in a developing community to apply them for the benefit of society and his fellow-men.
- CLAUSE II An indispensable aspect of the maintenance of the Rule of Law is the availability of lawyers to defend the civil, personal and public rights of all individuals

and the readiness to act for those purposes resolutely and courageously. Such a readiness involves the obligation to take an active part in implementing and making effective schemes of legal aid for the poor and destitute.

CLAUSE III The lawyer should endeavour:—

1. to secure the repeal or amendment of laws which have become inappropriate or unjust or out of harmony with the needs and aspirations of the people;
2. to review proposed legislation and delegated legislative enactments, and to ensure that they are in accord with the Rule of Law;
3. to ensure that the law is clear and readily accessible;
4. to promote legislation establishing the legal framework which will enable a developing society to advance, and its members to attain their full dignity as human beings.

CLAUSE IV The lawyer should assist in the work of administration; he should insist, nonetheless, that it be executed with respect for the rights of the individual and otherwise according to law, and strive to assure judicial review of all administrative acts which affect human rights.

CLAUSE V Lawyers must bring to bear in the field of international relations the underlying principles of the Resolution of Rio, and the Conclusions of this Conference: respect for law, coupled with a concern for all mankind, particularly the poor, the weak, the illiterate, and the oppressed.

CLAUSE VI This Committee endorses the Conclusions of Rio regarding the Role of Legal Education in a Changing Society as being particularly relevant in the context of the Rule of Law in developing societies. It urges lawyers to be actively concerned with legal education and the provision of adequate incentives for teachers of law, and to do their utmost to implement the principles enunciated in those Conclusions. The Rule of Law, as a dynamic concept, requires that legal educa-

tion should bear a realistic relation to the social and economic conditions obtaining in developing societies, so that future lawyers in the Region may be better equipped to perform their role in a constructive manner.

CLAUSE VII This Committee recommends the adoption by the Commission of a resolution, in the form attached, relating to the consideration of the feasibility of promoting a South-East Asian and Pacific Law Institute.

CLAUSE VIII Lawyers should endeavour to enlist the aid of their professional associations to secure the acceptance by their members of the ideals set forth above.

Resolution on the Role of the Lawyer in a Developing Country

(COMMITTEE III)

WHEREAS the countries in the Region vary in standards of legal education; and

WHEREAS co-operation on a regional basis is an effective means of enhancing the role of legal education in advancing the Rule of Law in the Region;

AND WITH A VIEW TO:

1. Providing a centre where training programmes may be conducted for teachers of law in the Region;
2. Examining existing methods of legal education and teaching techniques;
3. Providing a clearing house for information as to common problems and experiences in the Region and initiating a comparative study of the problems confronting the various legal systems;
4. Encouraging and facilitating research into the vital problems of social and legal adjustment posed by the impact of Western legal institutions and concepts;

This Conference requests the International Commission of Jurists to consider the feasibility of the establishment of a South-East Asian and Pacific Law Institute to realize the foregoing objectives.

Resolution on Human Rights Regional Conventions for South-East Asia and the Pacific

(ADVISORY GROUP)

- WHEREAS the Rule of Law requires that fundamental rights and freedoms of every individual shall receive protection without discrimination not only under his national system of law, but also as a member of the international community;
- WHEREAS the protection and the promotion of human rights are now matters of international concern;
- WHEREAS the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on December 10, 1948, is a common standard for achievement by all peoples;
- WHEREAS the necessary Covenants for its effective implementation have not yet been adopted and all means for such implementation should be pursued;
- WHEREAS international action to protect human rights on a regional basis should be also pursued;
- WHEREAS the conclusion of a regional convention among some or all States in the South-East Asian and Pacific Region would make an important contribution, not only to the further protection of individual human rights, but also to the solution of problems arising from national, racial, religious, linguistic or other minority issues and lead to the maintenance of good relations in the area;
- WHEREAS such a Convention would give concrete expression to the adherence of the peoples of this Region to the Rule of Law;

Now, THEREFORE, this Conference

URGES the lawyers of the Region:

1. To press upon their governments the importance of the adoption of the necessary conventions for the protection of human rights in the Region, and, within the framework of the United Nations, the necessary general conventions for the protection of human rights, in each case with the appropriate implementing machinery; and

2. To request their governments to support the establishment of the office of United Nations High Commissioner for Human Rights, with status analogous to the United Nations High Commissioner for Refugees, as an immediate measure to safeguard effectively human rights throughout the world and ultimately as an adjunct to the Covenants;

RECOMMENDS

1. That the International Commission of Jurists encourage the adoption of a regional South-East Asian and Pacific Convention for the Protection of Political and Civil Rights;
2. That such a Convention be adopted by such States as are willing to do so and that due provision be made for later accession by other States in the Region;

SUGGESTS

That the International Commission of Jurists consider the establishment in the Region of a Study Group to advise the Commission on the implementation of these recommendations.