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# The Indian Civil Liberties Bulletin

[ A MONTHLY REVIEW ]

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## THE MIDDLE EAST CRISIS RESOLVED ARAB COUNTRIES SEEK A SOLUTION IN MUTUAL RECONCILIATION

The Middle East crisis has been resolved, though another has now arisen in the Far East. Soviet Russia convinced herself that the Anglo-American military intervention in Jordan and Lebanon was designed to obtain bridgeheads for an immediate attack on Iraq and perhaps also on the United Arab Republic and that the Western powers had gone to the brink of war, and her announcement that "important Soviet military manoeuvres were opening on the U. S. S. R.'s Middle Eastern frontiers" and her statement that "the guns are already beginning to fire" almost threatened to push the world beyond the brink. Happily, however, nothing like such a catastrophe occurred. Although in outward appearance the crisis was produced by the military action of Western powers, the whole question essentially was one of internal civil strife among Arab countries themselves, and a most satisfactory solution has been found for it by the Arab countries immediately concerned resolving to compose their differences and the other Arab countries bringing pressure upon them to abstain from interference in each other's affairs. This conception really formed the groundwork of the resolution which, for a wonder, was unanimously passed at the special session of the U. N. General Assembly convened to devise methods for controlling what looked like an explosive situation and to restore quiet in the troubled area. It should be remembered that Lebanon had originally taken her complaint about interference by the United Arab Republic in her domestic affairs to the Arab League, members of which eventually resolved the conflict, and went to the United Nations only after it was found that the League could give her no relief. If the Arab countries had done then what they have done now, there would have been no need to seek the help either of the U. N. or of any outside powers. The Anglo-American intervention served to create the necessary momentum for the Arab group to assert itself. But in the circumstances it is best that the Arab countries themselves have found at least a temporary solution for their internal conflicts, for no external agency, not even the United Nations, can impose tranquillity. It is only to be hoped that the renewed assurances of non-

interference and non-aggression given by these countries would be translated into deeds.

President Eisenhower set the tone in the Assembly for a calm and dispassionate consideration of the troubles of Middle Eastern countries. He expressed full sympathy with their legitimate aspirations for political independence and economic development, including the aspiration for Arab unification, without interference from outside and asserted that the Anglo-American intervention took place within the principles of the United Nations Charter just to save two of these countries from outside interference and to defend their freedom and independence, and that the intervention would be vacated as soon as the United Nations would take over the burden. He specifically reserved for the United States the right of individual and collective self-defence within the spirit of the Charter whenever the United Nations was unable to act promptly and maintained that the victims of aggression had a right to call for such assistance. But, in order to emphasize that the United Nations was the fulcrum of the U. S. A.'s foreign policy, he declared that, in taking the action that was taken in Lebanon, "if we, the United States, have been at fault, we stand ready to be corrected," and the Arab countries showed by the resolution they sponsored that in their view there was not the slightest ground to condemn what the U. S. A. had done as anything like aggression.

As a measure for solving the immediate problem before the Assembly, President Eisenhower asked the U. N. to make adequate arrangements for the protection of Lebanon and Jordan, but he accompanied this with a broader and more positive programme for dealing with the underlying causes of Middle Eastern conflicts, in which he suggested a constructive solution of them. Among these probably the most important was what he called "a stand-by U. N. peace force," a sort of international constabulary which would always be in readiness to offer assistance to countries threatened by armed pressure and which by the prompt action it could take in an emergency render unilateral intervention on the part of

any nation both unnecessary and unjustified. He also proposed a U. N. system of monitoring national radios, so as to put an end to the fomenting of civil strife from without. [The British delegate gave instances of the kind of instigation that was incessantly poured out in the "Voice of the Arabs" programmes of the Cairo radio, directly preaching revolutions in other countries, and it is known that the Egyptian expenditure on broadcasting has gone up from £ (E) 250 millions in 1948-49 to £ (E) 1,650 millions in 1957-58.] President Eisenhower also proposed the formation of an Arab development organization on a regional basis for the acceleration of Middle Eastern countries' progress in industry, agriculture, water supplies, education, etc., with assistance from the West if such assistance was requested. The President stressed the need of such an organization being governed by the Arab states themselves. He also suggested that the countries of the Middle East should themselves attempt to work out an agreed plan to end the new arms race in the area.

President Eisenhower's constructive approach to the solution of Middle Eastern problems was greatly helped by the plan which the Secretary General of the United Nations had previously put forward, in which he suggested (i) that the Arab states should make a declaration reaffirming their adherence to the principles of mutual respect for each other's territory, non-aggression and non-interference in each other's internal affairs, and (ii) that the activities of the U. N. Observation Group in Lebanon and the U. N. Truce Supervision Organization (which was set up to help prevent violations of the Israeli-Arab armistice agreements of 1949) in Jordan to prevent infiltration of arms and personnel into these countries from outside. What is of more importance, he also contemplated some sort of U. N. Commission that would stay on in the troubled region even after the immediate work of stopping such infiltration was over as "a desirable expression of the continued concern" of the U. N. "for the independence and integrity" of those lands, thus showing that the troubles of Lebanon and Jordan were more deep-seated than some were prepared to admit. What perhaps he had in mind was a representative of the U. N. in Beirut and a deputy in Amman. In this connection the name of Mr. Ralph Bunche, who worked successfully in the Arab-Israeli armistice negotiations, is mentioned.

#### The Arab Resolution

It was an Arab resolution which eventually broke the impasse in the Middle East crisis. Hostility between the United Arab Republic and the Governments of Lebanon and Jordan had been a major factor in creating the crisis, and that all the ten Arab member-states of the United Nations, often engaged in a feud among themselves, should get together to sponsor a resolution pledging all the countries of the region to a policy of non-interference in

one another's affairs is almost, as Mr. Casey said, a miracle, but the miracle has come to pass. The resolution does not contain the faintest hint of protest or even resentment at the Anglo-American intervention. It recognizes that the main trouble is with themselves. It therefore recalls and reaffirms Art. 8 of the Arab League, formed in 1945 as a framework of regional unity, which says:

Each member-state shall respect the systems of government established in the other member-states and regard them as exclusive concerns of these states. Each shall pledge to abstain from any action calculated to change established systems of government.

The resolution then calls on the Secretary General to make forthwith "such practical arrangements as would adequately help in upholding the purposes and principles of the Charter in relation to Lebanon and Jordan in the present circumstances (which means upholding their sovereignty and independence against direct or indirect attack) so as to make possible the early withdrawal of foreign troops from the two countries." The resolution implied that the major trouble of the Arab countries was their mutual enmity, and that the only way to stop such intervention as took place in Lebanon and Jordan was to establish cordial relations among all Arab nations. The representatives of the Arab states who took part in the deliberations of the Assembly brought this out in plain terms. Mr. Mohammed Ahmed Malgoub, Sudan's Foreign Minister, said:

We are in complete agreement that foreign troops should be withdrawn from Lebanon and Jordan, but we sincerely believe that such withdrawal will not, by itself, remedy the situation from which the Middle East has grievously suffered and continues to suffer.

If we in West Asia do not possess the moral courage to acknowledge and to right our mistakes and mend over our shortcomings, we can hardly hope that the efforts of men of goodwill in the United Nations and outside the United Nations will be of good avail.

Mr. Mongi Slim, Tunisia's Resident Representative, welcoming the specific mention in the resolution of an early withdrawal of Anglo-American forces from Jordan and Lebanon, declared that the presence of foreign troops had not aggravated the domestic situation in those countries. There had been no major incidents between U. S. forces and the Lebanese Opposition forces, for instance, and there had been no move which could be considered a threat to the United Arab Republic. But no matter how justified the presence of those troops was, it did constitute a factor in increasing Middle East tension. The Tunisian representative said that a withdrawal of troops was necessary but would not be sufficient without accompanying guarantees that the integrity and independence of Middle East states were assured. Finally, he upheld the right of any Government

to appeal for assistance from other friendly countries if it believed its independence to be threatened.

### India's Attitude

India's attitude stands in glaring contrast to the attitude taken by Arab nations. India rightly stressed the need for the withdrawal of foreign troops, but she completely ignored the conditions which brought foreign troops on the scene. While the Arab states recognized that the withdrawal depended upon the remedying of those conditions, India seemed to think that all that was required was to get the foreign troops out, and that once this was done the whole situation in the Arab countries would right itself, thus giving the go-by to the basic issue involved. Mr. Nehru was not content with the assurances of Britain and the U. S. A. that their troops would be pulled out as soon as the United Nations was ready to take over the job of restoring conditions of stability and absence of threats from outside in the affected countries. He severely criticized in the Lok Sabha the attaching of any conditions to the withdrawal of Anglo-American forces. He said: "Some indicate that the withdrawal of troops should take place in future provided certain conditions were fulfilled. The whole approach of making this withdrawal conditional on other things happening is not a right approach."

Mr. Arthur S. Lall, India's representative, dutifully voiced this sentiment in the Assembly. "The immediate, the foremost, the crying need," according to him, "of the present situation was to remove foreign troops from the Middle East." He said:

There can be no settlement, and indeed, no talk of an acceptable, workable and dignified, settlement, and no return to normalcy until this element of foreign troops had been removed.

This attitude would have been perfectly reasonable if the Middle Eastern countries had been subjected by Anglo-American troops to unprovoked aggression as Hungary was by Soviet troops. The withdrawal of troops would then be not contingent on anything else. The aggression must first be vacated before one can consider in what manner a recurrence of such aggression could be prevented in future. Soviet Russia was right in pressing for the evacuation of Anglo-American forces from Jordan and Lebanon without giving a thought to anything else because in her opinion Britain and the U. S. A. had committed such an aggression. Did India share this opinion? If so, why did she not give expression to it? Obviously because she felt that the Anglo-American intervention was not of the character of Russian aggression in Hungary. And yet she adopted towards this intervention an attitude even stiffer than she had adopted towards Soviet aggression against Hungary. India on this question was just as reasonable as the Soviet Union was in demanding an unconditional ban on nuclear weapons before an adequate

control system could be set up, whereas in fact such a halt must be contingent upon establishing an effective international control.

India did her best to canvass support for her demand for an unconditional withdrawal of Anglo-American troops among the representatives of the Asian-African group, but the proposal met with a chilly reception, and eventually Ceylon, a prominent member of the group, just as keen on seeing that the troops were out as any other member, had to part company. Her representative, Sir Claude Corea, said at the Assembly:

The real question before us is the question of how best to get the troops out of the two countries.

We accept the position that if the troops are to be withdrawn it will become necessary for the United Nations to take some kind of action to insure as far as is possible that no outside interference will take place.

It is the view of my delegation that if these two steps (viz., pledge of non-interference and suitable United Nations action) are taken at the present time, they will meet the needs of the present situation, and it should be possible for the United States and the United Kingdom, satisfied that the purpose they themselves had in view had been achieved, to complete the withdrawal of their troops.

One wonders whether such a one-sided view of international problems as India took of this particular matter does not proceed from what she thinks is required by her non-alignment policy. But this aloofness from the East-West blocs is often interpreted by her in a way which in effect favours the Eastern bloc, whereas real independence should lead her to adopt a view strictly on the merits of a problem, whether it pleases this bloc or that or whether it displeases both. On the question of Israel, however, he recently took a position which is a true interpretation of India's independent policy. Mr. Nehru has done a great public service by declaring that a just settlement of the Middle Eastern problems "obviously involves the continuation of Israel and its acceptance by the Arab countries and other countries around it." It would be fatuous to ignore Israel out of existence, and it would be an infidelity to the United Nations because that country is a creation of the United Nations. It required great moral courage on the part of Mr. Nehru to have affirmed this obvious truth, because it would be exceedingly unpalatable to Egypt and every other Arab country, for their one common aim has been — they do not seem to be united on anything else — "to eradicate the intrusive Zionist growth from the tissue of the Fertile Crescent." But what Mr. Nehru said is an inescapable truth, and it required to be said. We honour him for saying it.

## BILL TO CURB SUPREME COURT DEFEATED

The Supreme Court's momentous decision of 1954 outlawing racial segregation in public schools had already caused keen resentment among conservatives. But the series of decisions the Court issued since then, strengthening the rights of individuals against Government moves to counter subversion, brought this resentment to a head, and the conservative groups brought a number of bills in Congress designed to curb the power of the Court, and at one time it almost appeared that these frontal attacks against the Court's prerogatives would win the day and the Court would be rendered powerless to insure civil liberties to unpopular persons or organizations, as was the effect of its recent decisions. Happily, however, the Senate, on the eve of the 85th Congress coming to an end, killed two of the most dangerous bills and gave the Supreme Court at least what the "New York Times" has called a "reprieve."

### States' Rights Bill

One of these bills has come to be called a States Rights Bill. The original proposal was intended to reverse the Supreme Court's decision in *Pennsylvania v. Nelson*, 350 U. S. 497 (1956), holding that Congress had pre-empted the sedition field in the Smith Act of 1940 and had excluded state laws against overthrowing the federal Government. The states' rights bill was moved as an amendment to this comparatively narrow proposal, which would have let the states enforce their own laws intended to prevent the overthrow of the federal Government. To this proposal allowing the state sedition laws to prevail a specific provision was added (vide p. v: 134 of the BULLETIN), forbidding the courts from construing any federal statute—past or present—as excluding any similar state laws unless Congress specified such an intention or there was a "direct and positive conflict" between state and federal law. If the amendment had been adopted, it would have undermined the historic doctrine of "federal pre-emption," under which federal legislation takes precedence over state or local laws in the same field. It would have completely upset long-established legal relationships in commerce, labour and several other fields and would have produced utter confusion in inter-state relationships. Luckily, however, the Senate on 21st August defeated the amendment though by an exceedingly narrow majority of one, and along with this dangerously wide amendment has gone also the original narrower proposal permitting the separate states to enact and enforce their own particular brand of anti-sedition laws.

### The Jenner-Butler Bill

Another victory for the Senate was that it killed on the same day a bill which, if passed into law, would have nullified four of the most important civil liberties

decisions rendered by the Supreme Court in recent years. This Jenner-Butler Bill, so-called after the names of the Republican Senators who promoted it, was also like the states rights bill in the form of an amendment to an innocuous proposal for changing the procedure of review in federal courts. On this minor procedural bill Senators Jenner and Butler tried to superimpose an omnibus bill containing four sections, each intended to reverse a Supreme Court decision.

Though the bill is no longer alive, it would be worth while to see how drastic it was meant to be, so that it would give us an idea of the kind of onslaughts that are likely to be made upon the jurisdiction of the Supreme Court by sections which find the present Court's constitutional interpretations upholding the rights of the individual against governmental encroachment as too liberal and which would like a conservative interpretation to be put upon the Constitution in so far as individual rights are concerned.

The Butler-Jenner bill sought to undo Supreme Court decisions in three cases relating to subversion. One of its provisions was identical with the original proposal to which the states rights bill was moved as an amendment, i. e., it was meant to nullify the *Nelson* decision. The object of another part of the bill was to reverse the Supreme Court decision in *Yates v. United States*, 354 U. S. 298 (1957) and amend the Smith Act in two particulars: (1) interpreting the scope of the Act so as to cover "theoretical advocacy" of the Government's overthrow as well as "incitement to action" in that direction, and (2) broadening the definition of the Act's provision relating to the "organizing" of revolutionary groups. Another part of the bill was designed to nullify the Court's decision in the famous case of *Watkins v. United States*, 354 U. S. 178 (1957) and to forbid the courts to pass on the pertinency of questions asked witnesses by congressional committees. The bill lastly sought to reverse the decision of the Supreme Court in *Schwartz v. Board of Examinations*, 353 U. S. 232 (1957) and to deprive the Court of its jurisdiction to review any cases involving the admission of persons to the bar. We shall revert next month to all these cases, decisions of the Supreme Court in which it was proposed that Congress should overrule, in order to show in some detail how far-reaching the decisions are and how the courageous stand taken by the Court in defence of individual liberty and human rights provoked a revolt, which, though for the moment subdued, might raise its head again in the Eighty-Sixth Congress.

## DELAY IN BRINGING ACCUSED BEFORE A MAGISTRATE CONFESSION PROCURED DURING ILLEGAL DETENTION INADMISSIBLE

As a safeguard against police officials using coercion for the extraction of a confession, the Supreme Court of the U. S. A. has evolved a rule of evidence to the effect that any inculpatory statement obtained from a suspect while held in detention in violation of the commitment statute (requiring prompt production of the arrested person before a magistrate) was inadmissible in federal courts. The statute regarding commitment says that "an officer making an arrest . . . shall take the arrested person without unnecessary delay before the nearest available" magistrate for arraignment, so that at arraignment the magistrate before whom the suspect is brought should tell him of his rights. In the issue of April last, at p. v. 81, we reported a case in which the Supreme Court applied this evidentiary rule—the case of *Mallory v. United States*, 354 U. S. 449 (1957)—unanimously reversing the rape conviction of Andrew Mallory, and stated that legislation was being promoted in Congress to overrule the doctrine laid down by the Supreme Court.

This Mallory Bill, as it has come to be called, passed the House of Representatives in an extreme form, laying down that no confession shall be excluded from evidence "solely because of delay" in arraigning the prisoner, thus altogether taking away the protection against "unnecessary" delay between arrest and arraignment that is granted to prisoners who have made confessions. The Senate Judiciary Committee, however, amended the bill to permit only "reasonable delay." That change of a single word is of great legal significance in that it would allow the courts to continue passing on the reasonableness of police practices in detaining prisoners before arraignment. In that form the Senate passed the bill, but later an attempt was made to stiffen its provisions. Fortunately this attempt was turned down by the Senate on 19th August by a vote of 41 to 39 after a lengthy debate.

While reporting the Mallory case, we also gave an account in the April 1958 issue of an earlier case in which the Supreme Court applied its rule fifteen years ago for the first time—*McNabb v. United States*, 318 U. S. 332 (1943). In view of the importance of the principle enunciated by the Supreme Court, we give below an account of another case decided by the Court in between these two cases—*Upshaw v. United States*, 335 U. S. 410 (1948).

Andrew Upshaw, a Negro, was arrested on a charge of stealing a wrist watch at about 2 a. m. on a Friday and was taken before a magistrate for commitment only on the following Monday, after he had made a confession of guilt. Some thirty hours intervened between the arrest and the confession, during which period he was questioned by police officers. His pre-trial confession of guilt was admitted in evidence when tried in a federal district court

and on its basis he was convicted and sentenced. That the conviction was based solely on the confession is clear from the fact that after all the evidence was in, the judge stated that without the confession there was "nothing left in the case." Objection was taken at the trial that the confession was inadmissible in evidence and the *McNabb* ruling was cited to the effect that where confessions were obtained by holding persons in detention without carrying them promptly before a magistrate could not be received in evidence. But the district court thought that the *McNabb* ruling did not apply because Upshaw's detention "was not unreasonable under the circumstances as a matter of law."

On appeal to the Court of Appeals the United States attorney detailed the circumstances of the appellants' detention and stressed the fact that in their testimony the police officers themselves had stated that they had not had the appellant committed sooner because they did not have a sufficient case against him to cause the police court to hold him. From this the attorney concluded that the delay in taking Upshaw before a committing magistrate "was unreasonable and the purpose of it, as stated by the officers themselves, was only to furnish an opportunity for further interrogation." Under these circumstances, the attorney argued the *McNabb* rule made the confession inadmissible without regard to whether it was "voluntary" in the legal sense. The Court of Appeals rejected the appeal, basing itself on the ruling in another case—*United States v. Mitchell*, 322 U. S. 65 (1944)—in which the defendant admitted his guilt within a few minutes after arrest and though he was detained subsequently for eight days it was held by the Supreme Court that this illegal detention did not involve "use by the Government of the fruits of wrong-doing by its officers" and had no influence on his prior confession, which was therefore admitted in evidence. From this judgment the Court of Appeals in the instant case thought that the *McNabb* ruling only held that "a confession voluntarily given is admissible in evidence," and holding Upshaw's confession to be voluntary, dismissed the appeal.

The Supreme Court on certiorari reversed this judgment. It did not go into the question whether the defendant's confession was or was not voluntary, "since the *McNabb* rule bars admission of confessions." It held that "this case falls squarely within the *McNabb* ruling and is not taken out of it by what was decided in the *Mitchell* case," for the latter case "reaffirms the *McNabb* rule that a confession is inadmissible if made during illegal detention due to failure promptly to carry a prisoner before a committing magistrate, whether or not the confession is the result of torture, physical or psychological." The Court said:

In this case we are left in no doubt as to why this petitioner was not brought promptly before a committing magistrate. The arresting officer himself stated that petitioner was not carried before a magistrate [earlier] because the officer thought there was not a "sufficient case" for the court to hold him, adding that "even if the police court did hold him we would lose custody of him and I no longer would be able to question him." Thus the arresting officer in effect conceded that the confessions here were "the fruits of wrong-doing" by the police officer. He conceded more: He admitted that petitioner was illegally detained for at least thirty hours for the very purpose of securing these challenged confessions. He thereby refutes any possibility of an argument that after arrest he was carried before a magistrate without unnecessary delay. The judgment was written by Justice Black. Its concluding portion is very interesting:

The argument was made to the trial court that this method of arresting, holding, and questioning people on mere suspicion was in accordance with the "usual police procedure of questioning a suspect." However usual this practice, it is in violation of law, and confessions thus obtained are inadmissible under the McNabb rule. We adhere to that rule.

This case shows that in a federal court delay on the part of the police in taking a person arrested before a committing magistrate, of itself, renders inadmissible a confession made while the accused was so detained.

Justice Reed appended a minute of dissent, in which three other Justices joined. He admitted that the delay in the petitioner's commitment was unnecessary, but feared that the majority judgment would "make the rule of commitment 'without unnecessary delay' an iron rule without flexibility to meet the emergencies of conspiracies, search for confederates, or examining into the ramifications of criminality."

In view of the proposals before Congress to change the McNabb rule, it would be interesting to notice that a passage from a memorandum presented by a special committee on the Bill of Rights of the American Bar Association headed by the late Professor Zachariah condemns such proposals. The committee says:

Congress should be very reluctant to take away the only effective penalty now existing for violation of the fundamental right to have the continuance of custody determined by a magistrate and not by the uncontrolled will of the police, however able and devoted they may be.

## French Constitution's Fifth Republic

### 1.—Metropolitan France

The text of the new French Constitution drawn up by Premier de Gaulle has been published and it will be

submitted to the vote of some 45 million voters in France and the overseas parts of the French Republic towards the end of this month. The transformation from the Fourth to the Fifth Republic envisaged in the draft is complete. If the Fourth Republic concentrated power in the National Assembly, in which the deputies, elected for five years, could instal and overthrow Premiers, without endangering their own tenures (for though the Premier had a limited right of dissolving the Assembly, he could invoke it only once), the structure of government outlined by General de Gaulle for the Fifth Republic concentrates power in the executive, which means the President, who was just a figurehead in the old Constitution charged only with ceremonial functions.

The President in the new Constitution will be all-in-all. He will be elected by an electoral college comprising the National Assembly elected by direct universal suffrage, the Senate indirectly elected, the general councils of the departments and delegations of municipal councils. The Premier and the cabinet would be of his choice. Instead of proposing the Premier to the Assembly, as formerly, the President would name him and keep him in power. Though the principle of Ministerial responsibility before the Assembly is formally maintained, the draft Constitution provides that the Assembly can overthrow the Premier only on a motion of censure signed by one-tenth of the deputies and approved by an absolute majority of the total membership of the Assembly. The President will have the right to dissolve the Assembly but no sooner than one year after its election.

In case of "grave and immediate" peril, he can by his own decision assume dictatorial powers. The consultative committee, to which the draft was submitted for an expression of opinion, suggested that before the President could take all power into his own hands he should obtain the opinion of the constitutional court to be created to the effect that there was in fact a grave emergency threatening the nation or its institutions, but de Gaulle has not agreed to this proposed modification. The only change which it is said he is willing to accept is that the President will not be competent to dissolve the National Assembly in time of crisis and that both the Assembly and the Senate will meet to consider the situation unless circumstances prevent them from doing so. These articles in the Constitution are naturally criticized as opening the road to dictatorship; "Le Monde" has called the whole structure "a new kind of presidential monarchy."

The down-grading of legislative authority has been carried to such an extent in the draft that the Assembly's annual session, which is put at a minimum of seven months at present, cannot last for more than five months and a half. Indeed, there is not much work left for the Assembly. It will vote only on certain specified and severely limited major subjects; in regard

to all the rest the Government's policy will go into effect by the President's decree. A clear separation of the executive and legislative branches is provided for, so much so that a deputy or a senator must resign his seat in Parliament if he enters the Government.

The referendum will take the simple form of "yes" or "no"; and although it is recognized that strengthening the authority of the executive which was obviously necessary has gone in the draft Constitution to such an extent as to make Parliament almost a nonentity by reducing its power, the general feeling is that the draft must be accepted. The referendum will be held under conditions which will remain the same as brought de Gaulle into power and practically left the Republic's fate in his hands. For most Frenchmen the choice is between an instrument of government which does violence to the Republican conscience and chaos, and it is believed that a good-sized majority will vote for the draft. Former Premier Paul Reynaud, chairman of the consultative committee, while wishing for some improvements in the draft, still hoped that the referendum would go through, for he said "its failure would re-open the crisis of May while depriving us of the only man who can resolve it." This compulsory aspect of the situation was also mirrored in the opinion of the eminent political scientist, Mr. André Seigfried, who, while admitting that the proposed Constitution was exceedingly defective, still felt constrained to plead for an affirmative vote, saying "the 'yes' is imperative if we do not wish to find ourselves again to-morrow on the verge of a civil war." Similar is the position of the noted philosopher, M. Pierre-Henri Simon, who hates the authoritarian state that the new Constitution outlines for France, but, thinking that de Gaulle is an indispensable man, would like people to vote yes in the constitutional referendum. Thus, for Frenchmen the referendum will in effect be a personal plebiscite for the Premier.

## 2.—Overseas Dependencies

The draft Constitution also provides for France's overseas territories — Madagascar, French Equatorial Africa and French West Africa. To the combined population of 28 millions in this so-called Black Africa south of the Sahara General de Gaulle's offers self-determination with choices ranging from integration as parts of metropolitan France and internal autonomy within a federative "community of free peoples" all the way to outright independence. The Premier himself would like the inhabitants of these possessions, by casting an affirmative vote in the referendum, to enter this new community with France, which they might do either individually or through a primary African federation. The measure of self-rule which the dependencies will obtain in this way has not been worked out, but it has been made clear that remaining in the French community would involve, at least for the present, control of defence, diplomacy and

economic affairs by the Federal Government. But if any territory feels that it is no longer in need of continued French military protection, economic aid or diplomatic or technical assistance, it may vote no, in which case the negative vote will be taken to imply that the territory wants to curve out for itself a "separate destiny" from that of France. In other words, the territory will be allowed to secede from the French Union and become completely independent.

De Gaulle's original idea embodied in his draft was that the vote at the referendum would determine once for all whether any particular territory is desirous of participation in the proposed federal community or a break-away from it. But, at the suggestion of the consultative committee, he has agreed to offer all the overseas possessions freedom to modify later their immediate decision indicated by an affirmative vote. That is to say, if any particular dependency votes now for association with the federal community, it can, on finding that the community system does not work out satisfactorily, by a subsequent local referendum opt for complete independence at any time in future.

This modification has eased the situation for many of these underdeveloped territories which can hardly contemplate an immediate end to French subsidies with equanimity. Apart from about \$68 millions in contributions to the ordinary administrative budgets of the territories, French public investment in these lands is now being made at the rate of about \$190 millions a year. Most of them will therefore, it is believed, choose autonomy within a French federation at the popular referendum in the hope that they will achieve independence later when they find themselves in a position to fend for themselves. Premier Tsiranana of Madagascar, the largest of France's overseas possessions with a population of four millions and a half, described his reaction to de Gaulle's proposal thus: "After we join this community, we will leave again soon when we are mature, may be in a year, may be a century." But there are other territories whose reaction will be different. The Premier of French Guinea which has a population of two millions and a half, Mr. Touré, said: "We prefer poverty with liberty to riches without dignity," though what Guinea's final decision will be is doubtful.

For a long time French statesmen had offered frontal resistance to the independence movements of Arab territories. A new policy of making concessions to Arab nationalism was inaugurated by de Gaulle himself, who as Provisional President declared in 1944 that France's goal was to lead the colonial peoples to the management of their own affairs. This principle was introduced in the preamble to the Constitution of 1946, but no effect was then given to it. When M. Mendès-France offered internal autonomy to Tunisia in 1954, it was generally regarded as a sell-out of French imperial interests. De Gaulle is now making the same offer to all

colonial territories and is also accompanying it by an offer of the right of independence, if internal autonomy would not satisfy their ambitions. All liberal elements in France hail this policy as the only right one to follow in the face of the rise of nationalist sentiments in the Arab world. One factor which has helped Premier de Gaulle to enunciate such a policy looking in the direction of a complete liquidation of the French empire is the fact that in the whole of Black Africa with a population of 28 million the number of European settlers is less than 150,000, whereas in the rebellion-torn Algeria alone these settlers are as many as 1,200,000 as compared to 9 million Muslims.

That is the reason why the offer, first, of inclusion in the French-African community and, ultimately, of a separate future, made to sub-Sahara African territories does not extend to Algeria. The technical reason given is that Algeria juridically is part of metropolitan France unlike the other overseas possessions. The real reason of course is that the French settlers backed by the French army as large as 400,000 have threatened a revolt if the Government gives in to the rebel demand. The Premier is undoubtedly anxious to conciliate Algerians, but what precise steps he will take is not yet made clear. He has appealed to the inhabitants of Algeria to vote affirmatively in the referendum and thus show their willingness to work for their political advancement in a French framework, but he has not yet said what a negative vote on their part would mean. One only hopes that Premier de Gaulle, whose views are known to be flexible on this issue, will not, on being confirmed in power, withhold from Algeria what he offers to the rest of French Africa.

Thus the referendum poses different questions to Frenchmen and the inhabitants of the overseas dependencies: the latter will be voting primarily on whether to join the proposed French-African community or to secede, and the former primarily on whether to look for a stable government in France or a return practically to pre-de Gaulle political chaos.

### School Integration in Little Rock

The crisis created in Little Rock (Arkansas) last year when the school board's programme of gradual integration was put into effect in the Central High School will be in the recollection of our readers. Governor Faubus first used the National Guard to keep the Negro children out and then withdrew the guard under court order but did nothing to maintain order at the school, if in fact he did not indirectly instigate it. When mob violence broke out, the President had to send troops to Little Rock to put it down, and it was only with the help of these federal troops that the school could be maintained even in a minutely integrated form—only nine selected Negro children had to be allowed to attend.

Now, on the eve of the opening of the new school term on 2nd September, the school applied this year for a

delay of two years and a half in carrying out integration, and in June the federal district court granted the application, suspending integration to allow for a "cooling-off period." The National Association for the Advancement of Coloured People appealed against this decision, and the Circuit Court of Appeals at St. Louis on 18th August allowed the appeal, reversing the district court's order and reinstating the integration programme. In view of the importance of the question at issue, all the seven judges of the court instead of the usual three heard the appeal. The court's decision, which was unanimous except for Chief Judge Gardner who dissented, was written by Judge Matthes, who said that the issue boiled down to whether public resistance, including mob violence, constituted sufficient cause "to nullify an order of the federal court directing the (school) board to proceed with its integration plan." Judge Matthes said that it was not up to the Appeals Court to tell the Little Rock school board how to carry out integration, but he noted "that at no time did the board seek injunctive relief against those who opposed by unlawful acts the lawful integration plan, which action apparently proved successful in the Clinton and Hoxie situation." The court observed, an affirmation of "temporary delay" in Little Rock "would amount to an open invitation to elements in other districts to overtly act out public opposition through violent and unlawful means." Judge Matthes said:

We say that the time has not yet come in these United States when an order of a federal court must be whittled away, watered down or shamefully withdrawn in the face of violent and unlawful acts of individual citizens in opposition thereto.

Judge Gardner said that he felt that the Little Rock school board had acted in good faith and that the district judge had based his decision "on realities and conditions rather than theories."

The school board then asked for a stay of the Appeals Court's order reinstating integration, and the Chief Judge, who was a dissenter in the court's decision, granted a stay for thirty days to allow for time to appeal to the Supreme Court, saying that the full court had decided that a stay would be granted if one were requested. The N.A.A.C.P. appealed to the Supreme Court, which has adjourned the hearing of the case in a special session till 11th September. The Federal Government has filed a brief fully siding with the N. A. A. C. P. against any delay, stressing particularly the point that "the constitutional rights of some citizens may not be suspended or ignored because of the antagonistic acts of others." In the meanwhile Governor Faubus, whose position has been immensely strengthened by an overwhelming victory in the primary for his bid for a third term, called a special session of the Arkansas legislature which has approved a bill to close the state's public schools, in the event of racial integration by court order. All the members of both houses of the legislature voted for the bill except one. If the Supreme



Court affirms the Appeals Court's decision, there is again likely to be a head-on collision between the state and federal authorities. The hope is earnestly expressed that some alternative may this time be found for the use of federal troops in implementing the court's order.

#### A Virginia Case

The same question has arisen in Virginia, a stronghold of segregationists. Last year the state's Pupil Placement Act, allowing a special board appointed by the Governor to assign pupils to different schools ostensibly on non-racial grounds, was held by a federal district court to be unconstitutional "on its face" and the court ordered Norfolk, the most populous city in the state, to make a beginning in the desegregation of public schools at the start of the 1958-59 school term. When, however, 151 Negro children asked for admission to white schools, the school board of Norfolk refused admission to all the applicants. Relief was sought in the district court on behalf of some of the children, and Judge Hoffman on 25th August ruled that the applications of 16 children were denied for reasons "legally insufficient." Some of the applicants were refused admission because of their failure to meet minimum scholastic requirements, or their refusal to take aptitude tests, or greater proximity of schools to the homes of the pupils. These reasons for rejecting the applications were accepted as valid by the judge. But some applications were rejected by the school board on the ground either that there was a prospect in two localities of racial tension if Negro children were admitted to white schools and that the "isolation" of Negro children would retard their education in all-white schools. Judge Hoffman rejected these reasons. As to violence, he cited the decision of the Appeals Court in the Little Rock case and said that this decision, which is the law for Norfolk too until reversed by the Supreme Court, "precludes further consideration of a plea of probable racial tension or racial violence as a sole legal excuse for denying an otherwise qualified Negro child admittance into a previously all-white school." If racial violence or tension were all that were necessary to defeat compliance, the judge said, "acts of racial violence would in my opinion be incited" by opponents of school integration. On the question of social isolation of a Negro child, the judge observed that psychologists had testified that isolation "is one, but only one, situation which may tend to deter the child." Expert testimony indicated that the isolation might also act as a spur to greater effort. Judge Hoffman ordered the children who were denied admission on these grounds to be assigned to the white schools into which they had sought admission and implied that the members of the school board would be cited for contempt if qualified Negroes were not so assigned.

On 29th August the Norfolk school board announced that it was going to make the assignments in compliance with the judge's direction, though the action was "contrary to what all the members of the school board honestly and sincerely believe is in the best interests of the applying children, the children in the affected schools and the public in general." Judge Hoffman said that if the Supreme Court should uphold a district court stay of two years and a half in school desegregation at Little Rock, he would be obliged to reconsider the Norfolk case, but, he added, for the Supreme Court to do so would "completely and effectively from a practical

standpoint destroy the effective compliance" with its 1954 anti-segregation decision.

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## COMMENTS

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### Curb on Press Freedom in the Interest of "Friendly Relations with Foreign States"

How extensive is the change effected by the addition to Art. 19 (2) of a clause permitting legislatures to enact restrictions on the right to freedom of speech and expression in the interest of "friendly relations with foreign states" is illustrated by the proposal to amend the penal code of West Germany with a view to "protecting the dignity of heads of foreign states."

In April last a weekly illustrated paper, "Der Stern" of Hamburg, published a report about the divorce of Empress Soraya, in which the Shah's divorce was attributed to the Imperial Court of Iran. Similarly, in an article it was reported that Queen Juliana of Holland had planned to abdicate. Such remarks about royal personages caused offence in the foreign embassies with the Bonn Government and it is said that even formal protests were lodged.

The Government, feeling that the relations of the Federal Republic with other countries are unnecessarily complicated by this sort of personal reporting in newspapers, is contemplating a change in its criminal law and as its object is to cause newspapers to cease referring to personal matters affecting the heads of foreign states, whether the reports be true or otherwise, the change proposed is fairly drastic: it provides for a maximum penalty of two years' imprisonment or a heavy fine for anyone who spreads scandalous or defamatory, true or untrue, information about the private life of a head of a state or any member of his family.

The Government's plea is that the provisions of the 1874 law of libel are insufficient to meet such cases. In Anglo-Saxon law, for example, the protection of the individual is much better assured. But the German newspapers are up in arms. They for their part recognize that reports about heads of foreign states should not be lightly put into circulation, but contend that the draft law in its practical working will prove dangerous to the freedom of the press, particularly because the proof of justification is excluded. To give a sacrosanctity to heads of foreign states, as the law would do, would involve, it is said, a grave risk to the people's right to know.

In our country, the critics of the amendment of Art. 19 (2) suggested by way of a compromise that the clause relating to "friendly relations with foreign states" be limited to the protection of the dignity of heads of foreign states, as in fact the Law Minister had said was the object of the clause. But the Government was unyielding; it persisted in giving an alarmingly wide sweep to the restrictive provision, which indeed would allow even a temperate criticism of a foreign government, not touching the head of the state at all, to be taboo. In this connection we would again bring to the notice of our readers, what we referred to at p. iv : 231, that the revised criminal code of Canada deleted the section in it dealing with libel on heads of foreign states, which ran as follows:

Every one who, without lawful justification, publishes a libel that tends to degrade, revile or expose to

hatred and contempt in the estimation of the people of a foreign state any person who exercises authority over that state, is guilty of an indictable offence and is liable to imprisonment for two years.

This provision was limited in its application to libelous criticism only of heads of foreign states, and even so when it was devoid of justification; and still the Government thought fit to do without it. The proposed West German law extends even to true reports about the personal life of a member of the royal family, and the newspapers of the country oppose it because it will in fact affect such newspapers as have no sympathy with this type of sensational journalism; and yet even this law purports to deal only with "scandalous or defamatory" matter that may appear in periodicals. But the amended Art. 19 (2) of our Constitution gives blanket powers to legislatures enabling them to gag any newspaper on the ground of "friendly relations with foreign states." The language used is as wide as could be imagined.

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## CIVIL LIBERTY UNION NEWS

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### Formation of Delhi C. L. Council

At a meeting held on 14th August the Delhi Civil Liberties Council was formed, with Mr. C. B. Agarwala, former Judge of the Allahabad High Court, as President, Mr. Tilak Raj Bhasin as Secretary, and Mr. P. N. Joshi as Joint Secretary.

At the meeting which was presided over by Mr. N. C. Chatterji, Working President of the All-India Civil Liberties Council, he urged the necessity of continuing publication of the INDIAN CIVIL LIBERTIES BULLETIN, quoting in this connection the remarks made by Mr. Roger N. Baldwin, Chairman of the International League for the Rights of Man, that "the BULLETIN is the most complete coverage of national issues of any publication in the world specializing in civil liberties" and that "to us abroad it conveys the most satisfactory interpretation of civil liberties which we get from any country," and saying also that the BULLETIN is characterized by "fidelity to fact and principle, uncompromised by partisanship of any sort."

The meeting also passed a resolution on the Jaipur lawyers' agitation, similar to the one adopted by the Executive Committee of the All-India Civil Liberties Council (infra).

### Executive Committee of the A.-I. C. L. Council

A meeting of the Executive Committee of the All-India Civil Liberties Council was held in Delhi on 16th August, at which it authorized Mr. C. B. Agarwala to represent the Council at the International Colloquy which the Belgian League for the Defence of the Rights of Man is organizing at Brussels in October. At the colloquy a survey will be taken, among other things, of the situation of the fundamental human rights in the national and international fields.

The Committee then adopted the following resolutions:

*Civil Liberties in Kerala.* — The A.-I. C. L. C. notices with grave concern that civil liberties have been in peril in the State of Kerala during the recent disturbances, and the methods adopted in suppressing them have given a rude shock to the citizens of the State in the maintenance of civil rights and the enforcement of the basic liberties of the people.

The Council regrets that the Government have not so far taken any steps to institute an independent judicial investigation into the unfortunate occurrences. The Council is definitely of the opinion that if the Kerala Government does not take any effective steps in this direction, then the Government of India should institute a proper judicial inquiry which should not be confined to the State of Kerala but the terms of reference of such a Commission of Inquiry should cover all other States where such deplorable incidents have taken place.

*Lawyers' Agitation in Jaipur.* — The A.-I. C. L. C. regrets that the situation arising out of the agitation of the Jaipur lawyers against the abolition of the High Court Circuit Bench has been allowed to deteriorate by the Government. The Council is of the opinion that Circuit Benches at certain places are conducive to the convenience of the litigant public, and in the interest of speedy and inexpensive justice they should be retained.

In this connection, the basic fact is to be noted that under the Constitution of India, High Courts are not only courts of Appellate Jurisdiction but also courts of Original Jurisdiction for the enforcement and protection of the fundamental rights of the people and it is essential that such courts should be within easy reach of the common man.

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## SEC. 295 I. P. C.

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### Destruction of Idols

#### SUPREME COURT'S INTERPRETATION OF SEC. 295

The Supreme Court had occasion on 25th August in an appeal to interpret the proper scope of sec. 295, I. P. C., which reads as follows:

Whoever destroys, damages or defiles any place of worship or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

The appeal arose from the agitation and activities carried on by the Dravida Kazhagam, a community of persons who profess to be religions reformers and as such carry on propaganda against idol worship.

On June 5, 1953, Mr. S. Veerabadrán Chettiar filed a complaint in the court of the Additional First Class Magistrate, Tiruchinappalli, alleging that Mr. E. V. Ramaswami Naicker, the Dravida Kazhagam leader, was carrying on a campaign to vilify a section of the Hindu community. It was stated in the complaint that on May 27, 1953, Mr. Naicker, abetted by two of his colleagues, broke an idol of "God Ganesa" in public at the Town Hall Maidan, and before breaking the idol, which was sacred to the Saiva section of the Hindu community, he made a speech expressly stating that he intended to insult the feelings of the Hindu community by breaking the idol, and thus was guilty along with his colleagues of an offence under sec. 295, because they had broken "an object held sacred by any class of persons," as specified in that section. The complaint prayed that a process might issue against the three accused persons.

The Additional First Class Magistrate dismissed the complaint, holding that the mud figure of Ganesa alleged to have been broken by the accused was not an object held sacred or worshipped by any class of persons. Simply because, the Magistrate said, it resembled the "God Ganesa" held in veneration by a section, it could not become an object held sacred.

In July 1953, a revision petition moved by the complainant against the order of the Additional First Class Magistrate was dismissed by the Sessions Judge. The High Court of Madras also held the same view as the courts below and dismissed the revision petition. It also refused to the complainant a certificate to go in appeal to the Supreme Court. Thereafter, he came in appeal to the Supreme Court by virtue of special leave granted under Art. 136 of the Constitution.

The only question for determination in appeal was whether the petition of complaint disclosed a prima facie offence under sec. 295. All the courts below took the view that it did not, and on that ground the petition stood summarily dismissed before evidence pro and con had been recorded.

Mr. Justice B. P. Sinha, who delivered the judgment for a unanimous Court, said that, apart from the question of evidence which had yet to be adduced, it was a well-known fact that the image of Lord Ganesa, or any objective representation of a similar kind, was held sacred by certain classes of Hindus even though the image might not have been consecrated. His Lordship said:

The learned Judge in the court below had given much too restricted a meaning to the words "any object held sacred by any class of persons" by holding that only idols in temples or idols carried in processions on festival occasions are meant to be included within those words. There are no such express words of limitation in sec. 295, I. P. C., and in our opinion the learned Judge has clearly misdirected himself in importing those words of limitation. Idols are only illustrative of those words. A sacred book like the Bible or the Koran or the Granth Saheb is clearly within the ambit of those general words. If the courts below were right in their interpretation of the crucial words in sec. 295, the burning or otherwise destroying or defiling such sacred books will not come within the purview of the penal statute. In our opinion, placing such a restricted interpretation on words of such general import is against all established canons of construction. Any object, however trivial or destitute of real value in itself, if regarded sacred by any class of persons, would come within the meaning of the penal section.

It is clear that the courts below were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant claims to belong. The section has been intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have to be very circumspect in such matters and pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share those beliefs or whether they are rational or otherwise in the opinion of the court.

Although the Supreme Court held that the courts below had misdirected themselves in dismissing the complaint, it declined to upset the decision of the High Court

and order a fresh inquiry as the incident was over five years old, saying: "If there is a recurrence of such a foolish behaviour on the part of any section of the community, we have no doubt that those who are charged with the duty of maintaining law and order will apply the law in the sense in which we have interpreted the law."

## NOTES

### Contempt of Legislature

#### CONVICTION REVERSED BY COURT OF APPEALS

While proposals for nullifying the Supreme Court's historic judgment in the Watkins case are pending which, if passed into law, would make Congress the sole judge of whether the questions put to a witness by its committees in the process of investigating subversive activities were pertinent, thus depriving the citizen of his judicial review, it is interesting to note that the Court of Appeals for the district of Columbia reversed the conviction of Mr. Arthur Miller for contempt of Congress.

Mr. Miller is one of the two or three most important living American playwrights, having won the Pulitzer Prize for his plays, among which is "The Crucible." He was summoned in 1956 before the House Committee on Un-American Activities and questioned in the course of hearings about the use of passports by alleged Communists. The playwright testified freely about himself, saying that he had never been a member of the Communist Party but had associations with many persons of a Communist bent of mind and had signed many Communist-backed petitions. But when he was asked to name other persons present at a meeting of "Communist writers" in 1947, he refused to answer these questions. He said he could not in good conscience do so and also contended that the question was not pertinent to the committee's passport inquiry. He asked the chairman of the committee not to press the direction to answer the question and requested him to defer it. Ten more days were given him to do so. Thereafter the House cited him for contempt. He was ultimately convicted and fined \$500 and given a thirty-day suspended sentence.

Mr. Miller appealed, and on 7th August the Court of Appeals (all the nine judges sitting because of the importance of the case instead of the usual three) unanimously acquitted him, holding that Mr. Miller was not clearly forewarned by the committee, as he should have been, that he would risk a contempt citation by failure to answer a specific question. The ruling was based on the Supreme Court's decision in *Quinn v. United States*, 349 U. S. 155 (1955), which held that a congressional committee, if it overrules a witness's objection to a question, must specifically direct him to answer the question, thus clearly apprising him that for failure to do so he would be liable to be cited for contempt.

The punishment in Quinn's case as well as in the instant case was imposed under a law of 1857, which made contempt of Congress a crime and substituted a fixed term of imprisonment by way of punishment by a judicial process for variable periods of congressional custody by Congress' own processes. The law made a change only in respect of punishment, but, like all other criminal statutes, this law, as Chief Justice said in the Quinn case, "requires a criminal intent," i. e., "a deliberate, intentional refusal to answer," and that "this element of the offence, like any other, must be proved beyond a reasonable doubt." In that case the witness was not given a fair appraisal of the committee's ruling on his objection, and because of this

his "refusal to answer is not contumacious, for there is lacking the requisite criminal intent." The Chief Justice said:

Unless the witness is clearly apprised that the committee demands his answer notwithstanding his objection, there can be no conviction under section 192 [the law of 1857] for refusal to answer that question.

This ruling formed the basis for the decision in the instant case.

## GLEANINGS

### The Legal Aspects of Intervention

By A. L. GOODHART

The dispatch of United States Marines to the Lebanon and of British paratroops to Jordan has given rise to some difficult questions in international law. These are of importance to all of us because they must be taken into consideration whenever practical decisions have to be made. I shall not, however, make any reference here to the political aspect, as I am solely concerned with the law.

Art. 1 of the United Nations Charter states that the major purpose of the United Nations is to suppress acts of aggression or other threats to the peace. Art. 37 then provides that the parties to any dispute must refer it to the Security Council, which is under a duty to act.

There is, however, one all-important exception to the use of force by an individual State. Art. 51 provides that nothing in the Charter shall impair its inherent right of individual or of collective self-defence if an armed attack occurs. This is only reasonable, because no country can be expected to remain defenceless while the Security Council makes up its mind what to do.

That is clear, but unfortunately the interpretation of this Article has been disputed. Can a State which is not itself threatened act in collective self-defence with another? The answer that has been accepted by almost all authorities is that collective self-defence means defence in the broad sense.

Sir Hersch Lauterpacht, a judge of the International Court of Justice, has pointed out that "unless such right of collective self-defence is recognized, the door is open for piecemeal annihilation of victims of aggression by a State or States intent upon the domination of the world."

The next question is: Does this right of collective self-defence arise only when an armed attack has actually occurred? On this point, Mr. Dean Acheson, the former American Secretary of State who was one of the major authors of the United Nations, has emphasized that we must be realistic. To argue that the threat of force can only be opposed by moral and political pressure is, as he said, "a combination of phony law and fuzzy morals."

He concluded that, between an opponent who is prepared to use force to gain his end and one who is not prepared to use force to defend his interests, the aggressor is usually the winner. There is nothing, therefore, in the Charter of the United Nations which will prevent one State from taking reasonable steps to defend the integrity of another.

This brings us to the major question: What steps can be taken to defend this integrity? It is clear that, as a general rule, any interference in the domestic affairs of another country in unwarranted. Thus, country A cannot send its troops into country B so as to support one political party against another. But, on the other hand, it is equally clear that one country may support the government of another against force and disorder fomented from outside.

Thus, in 1947, when support was given by Albania, Bulgaria, and Yugoslavia to guerrillas fighting against the Greek Government, the General Assembly of the United Nations called on those countries "to cease forthwith sending any assistance or support in any form." American troops were introduced into Greece, and order was restored.

Such intervention is justifiable when the attack on the existing government is encouraged and given material support by a foreign State. This is reasonable, because otherwise all the cards would be in the hands of the subversive forces.

This does not mean, however, that one State can place a puppet ruler in authority over another State, and then claim the right to support him by force against the wishes of the people. This would be like the man who murders both his parents and then asks the court to be merciful because he is an orphan.

I can sum up my conclusions by saying that one country is entitled to help another to resist an immediate threat of aggression until the Security Council has taken the necessary steps. This help can take the form of military support of an existing government which is endangered by outside hostile actions. This, I believe is neither phony law nor fuzzy morals.

In accordance with the principles stated above by a distinguished authority on international law, Mr. Lodge, U.S.A.'s representative, remarked at the final meeting of the Security Council last month: "What is really the stake here is the future of small nations — their right to exist and their safety against being swallowed up by larger powers."

Mr. Lodge said that the Soviet argument in the closing session of the Security Council would preclude any nation's asking for assistance when threatened by direct or indirect aggression. He said:

Each nation would be obliged to rely exclusively upon its own resources against every kind of threat. The sovereign right of every nation to participate in collective defence would be lost, and the whole Charter of the United Nations would be a dead letter. . . . National sovereignty includes a sacred right to co-operate with other sovereign states. The Government of the United States respects the right of any nation to choose a course of neutrality or to choose a course of isolation, but the right of all nations, large and small, to seek the advantages of collective security must certainly be given equal respect.