ASEAN LAW JOURNAL

Vol. I No. 1 SEPTEMBER 1982

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ASEAN LAW ASSOCIATION

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THE PUBLISHER

ASEAN LAW ASSOCIATION

The ASEAN Law Association (ALA) is a private confraternity of jurists, lawyers, and legal academicians from the five ASEAN countries, namely: Indonesia, Malaysia, Philippines, Singapore and Thailand. Organized in 1979, it seeks to promote closer relations, cooperation and mutual understanding among members of the legal profession in the ASEAN region and endeavors to support the aspirations of the Association of Southeast Asian Nations through the forging of a viable legal framework for cooperation.

The ALA Charter also expresses the following specific objectives:

> To provide the organizational framework for regional cooperation in the study of and research in the harmonization of relevant fields of law among the ASEAN countries as required by the social and economic development of the region;
>
> To provide organizational facilities for ASEAN cooperation in conflict avoidance, in the arbitration or resolution of legal disputes in transnational contracts within the ASEAN region; and
>
> To cooperate with international, regional, national and other organizations in the furtherance of the Association's objectives.

While ALA was formerly constituted in 1979 at Kuala Lumpur where its Constitution and By-Laws were adopted, the gestation period dates back to 1978 when the idea was initially broached at a meeting of some Asian lawyers in Bangkok. It was in February 1979 that formal proposals to organize the members of the legal profession were presented before a Djakarta Conference on Legal Developments in ASEAN countries. The response to the idea was uniformly enthusiastic.

At the First General Assembly, held in Manila from November 24-29, 1980, attended by some one thousand delegates, the ALA Constitution and By-Laws were ratified. In accordance with the Charter, the Second General Assembly is to be held at Kuala Lumpur on October 25-29, 1982.

The dialogue of national committees of ALA and their members is thus underway through bilateral as well as multilateral arrangements. ALA encourages and sponsors discussions on vital topics of common interest, including administration of justice, legal education, code of ethics, disciplinary procedures for the legal profession, and settlement of commercial disputes.

To facilitate sustained communication and cooperation, ALA publishes the *ASEAN Law Journal* and the *ASEAN Comparative Law Series*. It has a program for exchange of scholars and is developing a network for the regular exchange of legal periodicals among the region's law schools and institutions for legal research. Finally, the ALA Foundation has been created to ensure the Association's viability and development.

PRESIDENT'S PAGE

ASEAN LAW ASSOCIATION

Message

The ASEAN LAW ASSOCIATION brings together distinguished men of the law from all the ASEAN countries who are united, despite cultural and political diversity, in an earnest and voluntary endeavor to arrive at an understanding of each other's legal systems and at commonly acceptable rules of just conduct and procedure relevant to the region and conducive to the attainment of its aspirations.

In the Plenary Session of the First General Assembly of the ASEAN Law Association held in 1980 in Manila, among the significant recommendations unanimously adopted was the publication of an "ASEAN law review." It was perceived that the ASEAN nations ought to continue to be familiar with each other.

This ASEAN LAW JOURNAL, as the review was finally named, is intended to serve, among others, this purpose. It addresses itself to facts about the ASEAN region, and to the assessment of these data specially as they relate to laws, the legal profession and regionalism.

For its maiden issue, the Journal explores the legal systems of the ASEAN countries and the various aspects of their institutions.

The legal system of a country provides a framework for the interaction of institutions and the daily activities of society. A continuing assessment of it is fundamental to determine to what extent the legal system is promotive or deterent of progress, and to what degree existing laws are still valid in view of the dramatic changes that are taking place in today's societies.

Only through a collective, scientific and intellectual study and analysis of our legal framework could we aspire to improve the political, economic and social life in the ASEAN community.

The First Assembly was significant by itself. It indicated the regional awareness of the role of law in the attainment of social stability and economic progress and as an instrument for cooperation that can reach across boundaries.

It is our hope that the ASEAN LAW JOURNAL will serve as an effective vehicle for this endeavor.

EDGARDO J. ANGARA
President

EDITOR'S COMMENT

ALJ IS BORN!

The launching of this Journal takes the ASEAN Law Association (ALA) one more step toward its stated goal, that is, the building of a viable legal community. For with it, ALA has acquired a forum, even as it speaks through different tongues.

For now, the ASEAN Law Journal will come out twice a year. It is the hope of the editorial staff that in the next issue more ASEAN voices may be heard and that articles will be forthcoming for the consideration of the Editorial Committee.

We feel privileged to be able to bring to a wider audience some of the excellent papers read at the 1979 Seminar on Legal Developments in ASEAN sponsored by the Indonesian National Law Development Center. It was in this seminar that ALA was formally conceived, thus it is only fitting that this auspicious occasion be placed in proper perspective in the history of the Association. Our sincere thanks to Teuku Mohammed Radhie, Director of the Center and Secretary General of ALA, for giving permission for us to publish these materials.

Articles chosen for this first issue highlight some initial concerns, such as – what is the legal profession in the ASEAN context? They reflect the oftentimes varying notions of this term, and give an idea of the rich mosaic of legal cultures in the region, at once a source of strength as well as initial hurdles that must be overcome toward unity.

Still other key questions are: What is the legal profession's role in regional cooperation? What is the state of legal education in the ASEAN region? Should law be evolved or engineered? How are human rights regarded in the ASEAN legal systems?

The "special feature" section is designed to spotlight a program or activity in the area of law. It is meant to share the experience of one institution with others, on matters of common concern. For this issue

we feature the U.P. Law Center's Popularizing the Law Program, one of several efforts in ASEAN to bring the law closer to the people.

Documents of ASEAN will be regularly reprinted to help toward their wider dissemination. Selected national laws and international agreements will likewise be featured.

A "book notice" section will bring attention to some new or interesting books which are of special or general relevance to the ASEAN legal community.

The editorial staff feel privileged to have been "mid-wife" to the birth of ALJ.

PURIFICACION VALERA QUISUMBING
Editor

LAW AND DEVELOPMENT IN THE ASEAN REGION
The Indonesian Experience*

*Mochtar Kusumaatmadja***

Before I deal with the topic which is the subject of my discourse – "Planned Law Development in the ASEAN Region" – I would like to say a few words with respect to this meeting of lawyers from ASEAN member countries in general.

As a lawyer I am very happy indeed that finally a meeting of lawyers from ASEAN member countries has been convened.

On quite a number of occasions I have been asked the question why there has not been a meeting of ASEAN lawyers, whereas other branches of the profession have held their meetings thereby giving support and substance to the realisation of ASEAN ideals.

The question is a valid one because as ASEAN becomes more and more a reality the need to provide legal under-pinnings to the various activities of the ASEAN, especially in the fields of economics, trade, and culture become more obvious.

I have never been able to answer the question and I am therefore very happy that it is now being answered by the convening of this very meeting, here in Jakarta, starting today.

In fairness it should be said that relations between ASEAN member countries are not entirely devoid of activities in the field of law. Agreements have been concluded between members of ASEAN delimiting territorial sea and continental shelf or seabed boundaries. There have been for a number of years extradition treaties between some if not all members of ASEAN. There is also an agreement on Judicial Cooperation between Thailand and Indonesia, which hopefully will come into effect shortly.

On the non-governmental level meetings and seminars have been held between faculty members of various Law Schools in Indonesia and the Law Department of the University of Singapore.

It is true, that the afore-mentioned activities are of a bilateral nature and aimed at the solution of specific problems. They should, however,

not be ignored in our taking stock of activities in the field of law between ASEAN member countries as these various agreements and meetings do provide some basis of cooperation or at least some points of contact in this field.

As relations between ASEAN members in various fields develop, however, a broader and more sustained effort of cooperation in the field of law is needed. At the very least lawyers of ASEAN member countries should know more of each other's respective legal systems, policies and concepts. It is a fact that we know more about the legal systems and concepts of England, the United States, France and Holland than those of our own respective countries.

The first step therefore is an exchange of information, if possible in depth, on the legal systems and concepts of the various member countries of ASEAN.

The program and planned activities of this conference adequately fulfill this need.

The second step is to explore and find out what areas of law are most suited for a cooperative effort between the member countries of ASEAN. As the next meeting will hopefully be devoted to this question it is perhaps appropriate at this stage to venture some suggestions. On the subjects to be examined at the next meeting, the law on contracts and the law on corporations seem to me to be the most topical subject for discussion. Another suggestion is, perhaps, for this meeting to recommend to the ASEAN member governments to establish an intergovernmental committee to deal with legal matters on a continuing basis. Whatever the subject to be discussed, they should be of direct relevance and benefit to our recent efforts to make ASEAN a reality.

Without institutionalization at governmental level the exchange of views between delegates of ASEAN member countries will have only academic value.

PLANNED LAW DEVELOPMENT IN THE ASEAN REGION

As indicated in the subtitle, the paper will deal mainly with the Indonesian experience.

I should perhaps explain first the reasons why Indonesia has embarked on planned law development.

One reason is the magnitude and complexity of the task of law development which Indonesia faces as a consequence of its independence. The Dutch left behind a dualistic legal system in which native customary law, *hukum adat*, enjoyed equal status with European law *i.e.* Dutch law, except with regard to the Penal Law which was applicable to all inhabitants irrespective of citizenship, race or religion.

With such a historical background forging a national unified system of law is no easy task. Compounding the problem is the fact that no systematic and over-all law reform has been undertaken since independence. It is true that important changes have been wrought especially in the fields of constitutional law (including administrative law), and mining law but generally it can be said that law reform efforts have been incidental, haphazard and uncoordinated.

By 1973 it was realised that no law reform of any significance could be expected to happen if the then existing piece-meal approach were continued. The decision was then taken to make law development (*i.e.* law reform) part of the national law development process, starting with the second Five Year Development Plan (Repelita II, 1974-1979).

As some scepticism prevailed even amongst lawyers with regard to the very idea of planned law development, a case had to be made for this new approach, boiling down to the basic question whether the idea was at all feasible.

The problem with the law and development questions, at least in Indonesia in the early seventies, was that while the role of law in development was appreciated in principle, the law itself was in need of change.

For a newly independent country with a host of problems in need of solutions in a relatively short span of time, preferably in a planned way enabling policy makers to set priorities, the role of law in the process of development was attractive, if its viability could be proven.

For a country with traditions and a revolutionary past such as Indonesia has, where, especially during the days of the revolution, changes were not always effected with due regard to existing laws, this marked an important change of approach.

In a paper entitled *Fungsi Dan Perkembangan Hukum Dalam Pembangunan Nasional* written in 1970, the author attempted to make a case for an orderly development through law as less wasteful in terms of social and political costs, if not time-wise, as compared to unstructured or "revolutionary change".

Change being the essence of development, the question then became: how to bring about this change in an orderly, structured manner? The thoughts developed in the paper were based on Roscoe Pound's concept of "law as a tool of social engineering" adapted to conditions in Indonesia.

The need for and scope of law as a tool of social engineering in developing countries is much greater than it is in well-established societies where changes occur gradually, by well-established legislative mechanisms and the incremental process of judicial decisions. Although the techniques used are the same – court decisions and legislation – the

need for their conscious employment as a tool of social engineering is greater because of the greater expectation and urgent desire for change and betterment coupled with a newly found sense of power and confidence.

It is obvious, however, that this use of law, *i.e.* as a tool of social engineering, requires much more than mere knowledge of the law in the traditional sense. Just as an engineer needs to know something about soil mechanics and the strength of materials, so the lawyer in a developing society needs to know the interaction between law and other factors of development, mainly social and economic, implying a functional analysis of the legal system as a whole and of particular social norms and institutions.

The often-witnessed failure of law and lawyers in developing societies and the resultant disenchantment with law and lawyers lies in the fact that the traditionally trained lawyer is ill equipped for the formidable task confronting him in the developing society. Difficult enough as the problem is in developing countries with a single legal system, the task assumes overwhelming proportions in countries with a pluralistic legal system.

We should clearly distinguish two things: (a) the question of law as an instrument of change (development) and (b) the development of (the positive) law itself.

As to the first question we can here do no more than identify the problems we face in developing law as a tool of legal engineering. Amongst the main difficulties are:

(1) the difficulty of identification of objectives of legal development (innovation);

(2) the scarcity of empirical data on which a descriptive and predictive analysis can be made; and

(3) the adoption of an objective test for the measurement of performance.

In addition to these difficulties two dangers exist in developing countries which may defeat the idea of legal engineering *i.e.* the high incidence of charismatic leadership which, if unenlightened, is anathema to it and the inertia in attitudes and institutions inherent in matters pertaining to law. The difficulties and problems faced in the rational planning of legal development makes economic planning seem easy by comparison. Here at least one has measurable criteria and objectives such as gross national product, per capita income, higher and higher productivity, better income distribution and the efficient utilization of resources. There is perhaps truth in the saying that law is not so much a science as an art.

As to the practical question of the development of (the positive) law in developing countries, a special problem is faced by countries with a pluralistic legal system. The problem here flows from the fact that law cannot be divested from the value system adhered to by the people in a society. This means that legal concepts, institutions and attitudes are not transferable in the sense that mathematical or even economic concepts are.

This explains the futility, if not danger, of forcing a western concept of marriage such as monogamy on a Moslem population, or the disruptive effect of enforcing Islamic rules on inheritance in Central Java.

In practical terms, the development of law in developing countries necessitates the charting out in what areas of law innovations can be introduced and which areas should be left alone.

Such matters as contracts, corporations and business law in general are more appropriate areas for innovation as they are culturally "neutral".

Other areas of law are culturally even more neutral and here adoption of foreign models should pose no difficulties at all. To this category belong the technical rules related to communications like traffic rules whether on land (road traffic), sea (navigation) or air, and the law on postal and telecommunications.

In general, one can say that the areas most closely connected with the cultural and spiritual life of people should as much as possible be left undisturbed. These include family law, marriage and divorce and inheritance.

It was therefore a bold step and at variance with the newly developed legal theory, when Indonesia in 1973 pushed through a new law on marriage and divorce making polygamous marriages and divorce much more difficult for Moslems than was hitherto the case. Though implementation is not completely satisfactory in every respect, the main objectives of the 1973 marriage law have undoubtedly been achieved. The number of divorces and polygamous marriages has been greatly reduced. Not less important has been the contribution of the new marriage law in helping to reduce the over-all birth rate, thus greatly benefiting the population or family planning program.

DEVELOPMENT OF LAW: AS A PART OF NATIONAL DEVELOPMENT

It is in my opinion impossible to lay down a blueprint which will be valid for all developing countries. The problems to be faced are too diverse and so are the conditions in which each legal system finds itself, although as far as legal development is concerned they all share a common goal which is: to relate law to the process of development or, more

ambitious still, to make law part of the national process of development.

For nations with an undisturbed political history, free of foreign domination and its consequences in the sphere of law, law development may merely mean the modernization of the law. Here law development is identical with law reform.

Young nations with a colonial past have the special problem of radically changing a legal system which was designed primarily to serve the interests of a metropolitan power to one which is to suit an independent, developing nation. Here again we must distinguish between nations which have undergone a revolution or struggle for independence and those which gained their independence in a peaceful manner. Reestablishing order and the habit of respect for established authority and the rule of law is no mean task in these countries. This is especially the case when the achievement of political independence is not immediately followed by political stability and an orderly development of the country in all its aspects.

In such a case law development is more than mere law reform in its more restricted sense. The law development process here embraces the development and strengthening of institutions, processes as well as attitudes, besides revision of existing laws. Law development here in effect means the development of a new legal culture.

It is in this sense that we in Indonesia speak about national law development.

However, before I speak about law development in Indonesia as reflected in our Five Year National Development Program, allow me to speak about law development in a more general sense; in other words about law reform.

As I stated before, it is impossible to lay down a general blueprint for law development which will be valid for all developing countries. It is possible, however, to indicate in broad outline the main problem areas of legal development faced by the developing nations.

It is suggested that problems of legal development comprise three main problem areas: A. the inventory and documentation of existing law; B. the media and personnel; C. the development of national law.

A. The Inventory and Documentation of Existing Law

This problem area includes: (1) legal publications: (a) court reports, including judgments (decisions); (b) legislative materials: parliamentary debates, legislative enactments, statutes, codes; (c) monographs, describing customary law of particular regions; (d) publications of eminent jurists; (e) a national treaty series and agreements concluded with other countries and international organizations; (f) journals and other

legal periodicals. (2) Libraries: parliamentary, government (federal and state), courts, universities (law schools).

B. The Media and Personnel

This problem area includes (1) language and the law: law dictionaries and compendia, with the objective of the development of a more precise legal terminology for those countries already administering law in a national or non-foreign language. For countries still using a foreign language the pros and cons of the use of the national language for the administration of law and legislation may be considered (temporary loss of precision, as against closer "rapport" between the national legal process and the "legal culture" of the people); (2) the legal profession: the role of the legal profession and lawyer generally in a developing society; the role and problem of para-legal personnel (the "scrivener" in Ceylon and the *prokol bambu* in Indonesia); the role of the bar and similar associations; (3) administration of the law: the improvement of the judicial administration; the attitude of people towards settlement of disputes by judicial means (cultural influences); the settlement of disputes through non-judicial means (communal or village councils).

C. The Development of National Law

(1) The problem of selection of particular areas to be developed. There are different bases or criteria for selection: (a) on the basis of urgent need. Here there is hardly a question of selection as urgent need often dictates the choice of a particular area e.g. foreign investment law and related legislation. (b) feasibility: areas presenting too many obstacles are avoided (e.g. marriage, family and inheritance law in pluralistic societies) and least controversial areas selected. If combined with the criterion of need, haphazardness caused by method (a) mentioned earlier may be avoided. (c) the criteria of fundamental change, where change of the law through legislation is dictated by political, economic or social considerations. This is often done by former colonies with a politically conscious government. Areas usually chosen are: agrarian law, labor law, laws on mining and industry.

Where the need exists to attract foreign investments, the two opposite pulls of past historical experience and expectations of a bright future makes this area an uneasy path to tread requiring much ingenuity and political courage.

(2) The use of foreign models: although foreign models in terms of concepts, processes and institutions may be used in the process of development the limits of their use, whether by (a) outright adoption or (b) adaptation, should also be carefully considered.

Those are, in brief outline, the problems confronting young nations and their lawyers in the area of legal development.

The difficulty of the problem is compounded by the fact that very often we cannot afford the luxury of choosing or of setting our priorities at will.

One would like to consider Problem areas A and B for instance as preliminary or prerequisite to the real problems of legal development described in group III, but the sad fact is that these problems have to be faced and overcome at the same time, as their solutions have been long overdue.

As already stated, some young nations are more fortunate than others having suffered less from disruption in their past history.

PLANNED LAW DEVELOPMENT IN INDONESIA
(Repelita II, Chapter 28; Repelita III, Chapter 23)

It was not until the Second Five Year Development Plan, Repelita II *(Rencana Pembangunan Lima Tahun ke-II)* that law development was included in the five-year development plan. The first Five Year Development Plan (Repelita I) contained some fragmentary and scattered reference to law development.

The program for national law development as outlined in chapter 28 of Repelita II is an implementation of the basic guidelines for law development laid down in the *Garis-Garis Besar Haluan Negara* (Main Guidelines for State Policy) which is determined every five years by the People's Assembly (*Majelis Permusyawaratan Rakyat*) the highest legislative body in Indonesia.

The *Garis-Garis Besar Haluan Negara* (GBHN) states *inter alia* that law development efforts must be based on the state philosophy of *Pancasila* and the 1945 Constitution.

It further states that law development must have as its aim the maintenance of order and certainty of law which will benefit the national development efforts in all spheres of life.

For this purpose the following steps must be taken:

- The development of law by legislation through the unification and codification of certain areas of law.
- The strengthening and enhancing the authority and prestige of law enforcement agencies and the courts. A delineation of function and areas of authority of the various enforcement agencies (e.g. between police and public prosecutor's office).
- An improvement in the people's awareness of the law and their rights and duties under the law and in the attitude of law enforcement agencies.

- In the law development efforts through legislation, special attention should be paid to the rights of duties of citizens, legal assistance to the poor and the establishment of a court for administratative law.

An examination of the Program for Law Development will indeed reveal a program for law development in its widest sense.

One is a program for national legislation which in Repelita III is a continuation of the legislative program of Repelita II.

The Five Year National Legislative Program is a composite of the Five Year Legislative programs of all government Departments and non-departmental state institutions.

The preparation of the draft statutes and implementing regulations is coordinated by the Department of Justice.

The Department of Justice is assisted in this task by the Centre for National Law Development (See Chapter V below).

The section on law enforcement besides dealing with the delineation of authority and functions between the various law enforcement agencies also deals with the improvement of the performance of the enforcement agencies, the prevention of abuses of power and other related matters.

The program for the rehabilitation and improvement of the courts deals with improvement of working and living conditions of the judges, court clerks down to the establishment of files, publication of court decisions.

Since 1974 the annual conferences of Appeal Court Chief Justices have dealt with problems of the improvement in the administration of justice in all its aspects, with very good results.

The Five Year Law Development program also covers aspects such as improvement in legal education and training, law research and the legal profession.

The prison system is also given attention not only with regard to holdings but also as regards the treatment of prisoners and their rehabilitation.

The link between the Department of Justice as the ministry mainly responsible for the national development program and the lawyers outside government (teachers, the legal profession and the general public) is provided by the Centre for National Law Development through their various activities and programs or projects.

The above description is necessarily sketchy, as a full account would require extensive research which, in the short time available to this writer, could not be undertaken.

It is hoped, however, that this glimpse will give some idea of the comprehensive scope of the national law development effort undertaken in the Five Year Development Plans.

THE ENGINE OF NATIONAL LAW DEVELOPMENT – THE NATIONAL LAW DEVELOPMENT CENTER

It is impossible to speak about national law development in Indonesia without mentioning the *Badan Pembinaan Hukum Nasional* (National Law Development Centre) of the Department of Justice.

The Centre was established in 1974 as a semi-autonomous entity within The Department of Justice on the theory that its planned function and activities could not be entrusted to an administrative unit of the government bureaucracy.

On the other hand a close relationship with the Department of Justice as the ministry responsible for law reform and legislation was considered desirable for various reasons, historical, administrative as well as practical.

It is a matter of historical fact that the BPHN administratively, is not entirely new but a reconstitution of an already existing body The *Lembaga Pembinaan Hukum Nasional* (LPHN: Institute for National Law Development). The reorganisation of 1974 was however fundamental as far as basic philosophy, approach and working methods are concerned so that it can truely be said that the BPHN is an entirely new body.

The elevation of the Centre's status to the rank of a Director General increased its bureaucratic prestige and power, budget and otherwise. Coupled with a fairly large degree of autonomy and authority to cooperate with outsiders especially law schools and law research institutes, it offers a combination of the best of both worlds.

The following description is, for lack of time, taken from an article by June S. Katz and Roland Katz which gives a fairly good idea of how Center works.

> "One of the most important innovations in the 1974 reorganisation was the establishment of Three Divisions besides the Secretariat i.e. The Division of Legislation, the Division of Law Documentation, and the Division of Research and Law Development.

A. The Division of Legislation.

> The Division of Legislation adds a new aspect to law reform in Indonesia; before it was created there was no Indone-

sian institution – not even in the House of Representatives – systematically preparing drafts of proposed laws for discussion and future implementation. In the past, legislation had been prepared in a more haphazard fashion, with the result that some very important pieces of legislation had not been effective. Under the new system, on the other hand, drafts of laws are prepared by national committees of law teachers, private practitioners, and government lawyers before the enactment of a particular law becomes a matter of urgency. This procedure gives the experts time to consult among themselves and, more importantly, to consult with those people who are most interested in the outcome of a particular law.

For example, work was done recently with respect to a possible new copyright law. Invited to give their views on the subject were writers, publishers, film-makers, and the like, in short, the groups which will be most affected when such a law comes into being. This grassroots type of participation is potentially an important step toward democracy in a country where grassroots input into law making has heretofore been uncommon except during periods of revolutionary chaos.

The Division of Legislation of the National Law Development Centre has been quite active and has plans to confine this pace. In 1976-1977 it produced eight drafts of laws; in 1977-1978 it plans to produce twenty-five more; and in 1978-1979 it plans to add another twenty-two.

These draft laws, most of which cover basic areas, are especially necessary in Indonesia where many of the older laws are outmoded or no longer recognized as valid. Dutch law remained in effect in Indonesia (insofar as it was not superseded by new law) until 1963. In that year, one in which nationalistic feeling ran high, the entire civil code was revoked, and a concept known as "revolutionary law" was applied by the Sukarno government. That government and many of its laws were undone in 1965 by the New Order of President Suharto. All of these changes have created a real gap in Indonesia's governmental system and society today. The Division of Legislation of the National Law Development Centre is working to create a basis for such laws in a professional rather than in a political way. In the past, as the pamphlet describing the National Law Development Centre states:

> "Political atmosphere during the period of 1958-1968 . . . . was not favourable for the law development program. The Institute itself, which tended to be more of a political forum since the majority of its members were representatives of political groups, was not able to function as a working body. It was therefore, not surprising that the institute did not produce satisfactory results...".

Now, however, with technically neutral laws, the hope is that Indonesia will advance toward its goal of being a state based on the rule of law (*Negara Hukum).*

B. The Division of Research and Law Development.

This Division has been established in order to support the projects of the Division of Legislation. The functions of this Division fall under three headings – legal research, legal seminars, and training.

(1) Legal Research

This section is engaged in the type of work indicated by the title. What is particularly significant is that its research projects are given out partially on a basis of geographical distribution in order to insure that the National Law Development Centre is truly national.

Indonesia is a country composed of many different ethnic groups, language groups, and cultural groups. The Javanese have tended to dominate, in part because of their numbers, but other local groups are very important to the nation and its unity.

To prevent these other groups from feeling left out of the law reform process, a conscious effort has been made to include them. This policy may not always result in the best work-product because many of the other islands are less developed than Java. However, the policy does increase the possibility that drafts of laws will reflect a national will, a reflection which will greatly increase the acceptability of the laws after they are enacted.

Another important side-effect of the research projects run by the Centre is that these projects are enabling many Indonesian law teachers to make a living as law teachers. Before the creation of the National Law Development Centre, it

was not possible for law teachers to live on their salaries, so that they had to supplement them by outside work of a non-academic nature, usually law practice.

Now many law teachers can supplement their incomes by working on research projects of the Centre. Not only does this improve their teaching by keeping them up-to-date and providing new perspectives but it also has given the Indonesian law teaching profession a new self-confidence and self-respect. The Indonesian legal profession, led by these more self-confident and aggressive law professors, is beginning to emerge from the second-class citizenship it suffered during the Sukarno years.

A direct benefit of the work of the legal research section is the much needed enlargement of the body of Indonesian legal scholarship. For example, one project now under way is a study of the customary laws in force in the various parts of Indonesia, an important subject most systematically studied in the 1930s and 1940s by two Dutch scholars. By late 1977 the National Law Development Centre had produced over thirty publications including works by most of Indonesia's leading legal thinkers.

(2) Legal Seminars

Many of these publications are collections of papers written by Indonesian lawyers, judges, and scholars for the numerous legal seminars sponsored by the National Law Development Centre. Nine of these seminars occurred in the 1977-1978 fiscal year, all of them related to either present or future draft laws of the Centre's Legislation division.

Asside from their intrinsic value, the seminars, like the legal research projects mentioned above, have important side effects. First among these is the unifying effect which the seminars have on the diversity of peoples and cultures of which Indonesia is composed. The sites of seminars are constantly rotated so that almost every area has at least one. The participants are representative of all areas in Indonesia, a fact which facilitates cross-fertilization. In an archipelago state with poor communications facilities, such meetings provide a basis for nation-building which did not previously exist in the legal field. Before the National Law Development Centre came into being, the few such meetings held invariably took place in Java, most often in Jakarta.

This increased communication feeds into the law drafting process and makes it more representative. It also provides a forum for new ideas by bringing people out of their provincial environments into a stimulating national area. Numerous seminar participants from outlying areas expressed the feeling that for the first time they felt they were part of a national effort. Not only had they been to Jakarta and other areas to study national law, but others had come to their area to receive its input into the national effort.

(3) Training

Self-evaluation and self-criticism have been two important aspects in the evolution of the National Law Development Centre. Indeed, it was out of dissatisfaction with previous Indonesian law reform efforts that the Centre arose in the first place.

The Centre therefore is constantly looking for new ways to improve the Indonesian legal system. An important part of this activity consists of training programs which the Centre runs for its own staff, for practitioners, for academics, and for government officials. These training programs are numerous, inexpensive and easily accessible.

An important subject of training programs recently has been legislative drafting. Having determined that legislative drafting was to be one of its high priorities, the centre soon found out that one of the reasons why legislative drafting was a weak link in the Indonesian legal system was that legal drafting, in general was not taught in law schools. The Centre therefore has arranged for the training of people involved in legislative drafting, especially law teachers, who can pass this important skill on to their students. Many of these training programs are conducted in cooperation with the Consortium of Law Schools, a group of leading law schools which under the auspices of the Department of Education has as its primary duty the improvement of legal education in Indonesia.

The National Legal Development Centre's training programs also help to unify Indonesia's legal culture. Prior to these programs, a diversity of local laws, legal procedures, and even legal terms of art tended to be perpetuated by local law schools and local training programs. Now, however, these national programs can teach unifying ideas and methods.

More importantly, these unification efforts are not forced from above but rather are the result of the consensus which arises from national seminars.

This national aspect of the current law reform efforts in Indonesia cannot be overemphasized because of the strong localistic tendencies in a country like Indonesia. With respect to legal terminology for example, terms as basic as "constitutional law" were not uniformly used by the various law schools before the National Law Development Centre began solving that problem by holding a seminar on legal terminology.

C. The Division of Law Documentation.

National unification of Indonesia's legal system is also the moving idea behind the Division of Law Documentation. Obviously it is impossible to have a truly national system unless all the laws of the nation are accessible, preferably in one place. Yet, before the Division of Law Documentation was established, many of Indonesia's laws were not even easily accessible to people living in the nation's capital.

Now the Division is not only collecting all of the national laws in its Jakarta headquarters but also it has established branches in the provinces to collect all of the local laws. An inter-library loan system makes the entire system available to any user.

The Division of Legal Documentation has also created some basic reference works without which a national legal documentation system would not be viable. These works include a listing of Indonesian laws by subject, an Indonesian legal bibliography, a periodical index, and a listing of the papers given at all national legal seminars.

The success of this national documentation system depends not only on its creation, of course, but also on its continued use and maintenance. Recognizing this, the National Legal Development Centre has engaged in two other activities: seminars and training and training programs. Training a core of librarians who can deal with legal materials has been a high priority of the Centre, and several seminars on the advantages and availability of legal documentation have been held in different parts of the country.

One further activity of the Division of Legal Documentation is the publication of a law journal, *Hukum Nasional* (National Law). It not only publishes scholarly articles but also reports about research activities, new developments, and important court decisions.

Indonesia's National Law Development Centre has begun to fulfill Indonesia's law reform goals as set out in the latest five-year plan. More than that, what was once a mere plan has now become embodied in a functioning modern institution. There is now a base from which law reform, which in a developing country is always in danger of being overwhelmed by political and social factors, can grow in a professional, non-political manner. Although this development in itself is not sufficient to solve the multitude of problems which face a developing country such as Indonesia, it does mean that one of the preconditions for a successful attack on those problems has been met."

NOTES:

*Paper presented before the Conference on Legal Development in ASEAN Countries in Jakarta, Indonesia, February 5-10, 1979 under the auspices of the National Law Development Centre, Ministry of Justice, Indonesia.

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REGIONAL ECONOMIC INTEGRATION AND THE FUNCTION OF THE ASEAN LAW ASSOCIATION

*Merlin M. Magallona**

BACKGROUND

It is the purpose of this brief paper to broadly define the function which the legal profession in the ASEAN, now organized into the ASEAN Law Association (ALA), region can assume, and by performing such function it would thereby establish its relevance to the "felt necessities of the times" which now stir the whole ASEAN region in economic, political and social ferment. The immensity of the tasks involved in the formation of the Association of Southeast Asian Nations (ASEAN) signifies a many-faceted challenge to the leaders of the national societies in the region. As outlined in this paper, however, the legal profession has the distinct role of being architect and technician at the same time in the evolving conception of the ASEAN as a regional economic integration as well as in the operation of its specific component institutions. A short background can suggest a perspective to the cruciality of the lawyer's role in the region.

In the last three decades, the world economy has undergone dramatic changes which have made the present era so qualitatively different from the pre-war structure of international relations. In terms of quantitative expansion alone of the membership of the international society from 51 original members of the United Nations to its present 160 members, it would not be difficult to understand the urgency of fundamental readjustments in the resulting economic and legal patterns of relationship. For one thing, as Professor Truyol pointed out, international law has correspondingly shifted from its "ptolemic conception" to its present "copernican conception", thus emphasizing the universalizing impact of the major changes in the international community since the end of the Second World War.

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In economic terms, international relations have entered a new phase, and one of the most significant developments in this respect is the emergence of regional economic integration as a global process. This development rests on a legal foundation, opening a new chapter in the science of international law. Community or Integration Law, as this body of particular international-law rules has come to be called, now regulates an extensive network of regional interdependence. If we are to be guided by the position of the Court of European Communities, this community law (in the European Common Market) assumes the character of an independent set of norms, forming part of the international legal order and "independent from the legislation of States."[1] Understandably, the same general status may be conferred on the legal regime of economic integration in other parts of the world.

Beginning with the formation of the Council for Mutual Economic Assistance (CMEA) by the socialist community of states in 1949,[2] the integrationalist movement spread to Western Europe when the European Economic Community (EEC) was set up under the Rome Treaty of 1957 by Belgium, France, Federal Republic of Germany, Italy, Luxembourg, and Netherlands.[3] The major economic consequence of the EEC was the Stockholm Agreement of 1958 which created the European Free Trade Association, constituted by the United Kingdom, Sweden, Norway, Denmark, Switzerland, Austria, and Portugal.[4]

By the start of the sixties, the process of regional economic integration had arrived in the Third World. Latin America leads the developing countries in the movement for integration. In the last 15 years, this region has transformed its intra-regional bilateral economic ties into integration at both regional and sub-regional levels.

In February 1960, Argentina, Brazil, Mexico, Paraguay, Peru, Uruguay and Chile signed the Montevideo Treaty creating the Latin American Free Trade Association (LAFTA), whose membership included Colombia and Ecuador by 1961, Venezuela by 1966, and Bolivia by 1967.[5] Also, on December 3, 1960, Guatemala, Honduras, Nicaragua

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[1] See A.A. Aramburu Menchaca, *Multinational Firms and the Regional Process of Economic Integration.* 150 Recueil des Cours 337, 382 (1976, II).

[2] The establishment of the CMEA was decided in the Moscow Conference of 1949 of representatives of Czechoslovakia, Hungary, Poland, Romania and the USSR. The Charter of the CMEA was signed on December 14, 1959 and entered into force on April 13, 1960.

[3] The Treaty of Rome was signed on March 25, 1957 and entered into force on January 1, 1958.

[4] See *The Outer Seven,* 16 World Today 15 (Jan. 1960).

[5] See 455 UN Treaty Series 3.

and El Salvador concluded the General Treaty of Central American Integration for the establishment of a Central American Common Market (CACM). Eight years later, Antigua, Jamaica, Trinidad and Tobago, British Guiana, and Barbadoz constituted themselves into the Caribbean Free Trade Association (CFTA),[6] which became the Caribbean Common Market in 1973. In 1969, the Andean Common Market (ANCOM) or the Andean Subregional Integration was established under the Cartagena Agreement by Colombia, Chile, Peru, Ecuador and Bolivia.[7] Under the Panama Treaty of October 17, 1975, twenty-four Latin American countries formed the more comprehensive Latin American Economic System (SELA) "to strengthen and complement the various Latin American integration processes", through joint development programs.[8]

African countries are now grouped into economic integration blocs through the establishment of the West African Economic Cooperation in 1965, the Economic Community of West Africa in 1967, the East African Economic Community in 1967, the Central African Economic and Customs Union in 1968, and the Economic Community of West African States in 1975.

GENERAL RESPONSIBILITY OF THE ASEAN LAW ASSOCIATION

Thus, regional economic integration is not an isolated phenomenon but a distinct mainstream in the world economy. More significantly, the activation of the ASEAN in 1975, after seven years of relative inactivity, has been brought home to the lawyers of the region as a concrete reality. The opportunities and potentials of the ASEAN in this context will of course be determined by the concerted and coordinated efforts of all peoples of the member countries and, through their political leaders, intellectual workers, professionals, and technicians, they will work out the specific requirements of social progress and economic development. In this system of regional cooperation, the lawyers of the region can assume the role demonstrated in the other regional economic integrations which have been translated to reality by masterful legal planning and engineering. Also, as in those cases, the whole process of integration will have to be fitted into a legal framework which, together with that process, would operate through the mechanism of what would come about as the community or integration law. Obviously, this concerns not so much the independent work of individual lawyers in the

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[6] See 772 UN Treaty Series 3.
[7] See 8 Int'l Legal Mat. 910 (1969).
[8] See 19 Int'l Legal Mat. 1081 (1976).

ASEAN region, as the collective efficiency and competence of bar associations in each member country, now organized into an ASEAN Law Association.

This is far from suggesting that the ASEAN is mainly a legal institution. It is in fact a complex combination and interplay of social, economic, political and cultural factors in their variegated expression. All these factors, however, will have to be shaped into a working mechanism by a legal framework of multilateral agreement or agreements which should express the core intention of the member countries in the precision of language which has become the tradition of the law, and at the same time aim to achieve the flexibility desired by economic and political exigencies. In this sense, the ASEAN community is forged by an emerging regional community law, the member countries being linked together by a constituent legal instrument. In this sense too, the ASEAN lawyers assume a central role. Their responsibility is to systematize the development, clarification and codification of that law as a condition to an orderly flow of social and economic life in the ASEAN community. Necessarily the operation of the ASEAN is actualized basically through binding rules geared to achieve harmonization of intra-regional commercial, economic, and social policies – a complex process of attaining unification in diversity in which ASEAN lawyers must assume the collective responsibility of devising techniques and methods not only of avoiding disputes or providing procedures for their settlement but also of creatively transmuting binding rules into positive channels of decision-making. In brief, the general responsibility of lawyers in the region addresses itself to the task of active involvement in the construction, administration, and elaboration of the emerging ASEAN legal system.

TOWARD A PROGRAMME OF ACTION OF THE ASEAN LAW ASSOCIATION

ASEAN is not a ready-made package of economic integration. It is in its early stage, its legal framework being in the process of construction. Its growth and development will occasion the emergence of new institutions and mechanisms. Every step that the ASEAN takes in all fields of regional cooperation is at the same time an undertaking in the evolution of ASEAN legal processes. This makes the ASEAN a legal community whose formation defines the concomitant tasks of the ASEAN Law Association.

It will be recalled that the Declaration of ASEAN Accord lays down "a programme of action as a framework of ASEAN cooperation." This

programme reflects the relevant problem areas and at the same time suggests the main lines of work for the ALA.

The Declaration points out as a task of the member countries the "improvement of ASEAN machinery to strengthen political cooperation." This forms part of a more comprehensive programme of studying the "desirability of a new constitutional framework for ASEAN". Implicitly, this is a recognition of the inadequacy of the present constitutional set-up which presents a provisional character. Along this direction, ALA would have a wealth of accumulated experience on the part of the other economic integrations, particularly the comparative legal frameworks of regional economic integrations in the Third World. It is the task of a regional bar organization to work out a draft of an alternative framework treaty as a constituent instrument of a more unified economic-integration organization with a well-defined international personality. An effort of this nature would speed up the legal adaptation on the part of the member countries to the objective requirements of ASEAN in its transition to a higher stage of economic integration, characterized by a harmonization of intra-regional policies on labor relations, taxation, industrial development, and commercial regulation in general, as well as policies on banking and treatment of foreign investments. In preparation for this task, ALA could begin with a comparative study of the constitutional laws of regional economic integrations in Africa, Latin America, and Europe.

While the Declaration defines "settlement of intra-regional disputes by peaceful means" as a political undertaking in the larger sense, a manageable level of work on dispute settlement could be undertaken by the ALA, namely, the setting up of various institutional devices for negotiation, good offices, mediation, conciliation, and arbitration for transnational transactions within the region, dealing with commercial as well as with investment questions. It is not too far-fetched to estimate that to a great extent disputes which assume political dimensions could be preventively dealt with in terms of commercial or investment dispute-settlement. ALA could survey the whole range of possibilities in settlement of disputes and could take good lessons from the community experience in Western Europe, particularly the judicial experience of the Court of European Communities and the European Court of Human Rights.

Among the well-defined tasks which ALA could take up is pointed out in the Declaration: "Study on how to develop judicial cooperation including the possibility of an ASEAN Extradition Treaty." Obviously, this is addressed to the kind of professional skill and competence peculiar to the legal profession and ALA cannot escape this opportunity.

For some time, the task of concretizing the concept of the Zone of Peace, Freedom and Neutrality has been pending in the ASEAN agenda. Again, the Declaration makes a call for ASEAN cooperation on "immediate consideration of initial steps towards recognition of and respect for the Zone of Peace, Freedom and Neutrality wherever possible". The basic idea behind the Zone is that it is only under conditions of peace that ASEAN economic development and social progress could be undertaken. So fundamental is the task of building a framework of an Asian security system that ALA must contribute its thinking to the task of defining the Zone. Necessarily, it is the fundamental task of ALA to dynamize itself in the maintenance of peace and security and the development of friendly relations and cooperation in the region, not only among ASEAN members but between the ASEAN and the Indochinese countries as well. Peace as a prerequisite to development is indivisible.

The minimum requirements of industrial and trade cooperation set forth in the Declaration spell out a variety of legal implications. What is the legal framework to be utilized in the establishment of large-scale ASEAN industrial plants? Would the present preferential tariff arrangements be pursued toward the creation of a customs union? What are the legal techniques available that can facilitate this trend, and what is the desirable legal arrangement to achieve a customs union? Would the ASEAN develop logically a common external tariff, and what are the implications of this in respect to the external economic relations of the member countries, particularly with respect to the General Agreement on Tariff and Trade (GATT)? This should suggest that the trends set by the present stage of economic cooperation in the ASEAN are already raising major legal issues that should be the concern of the legal profession in the region.

Outside the Declaration, the horizon of legal work is much broader and we have the boldness of imagination to appreciate our professional responsibility in the structuring of the ASEAN future to the desired quality of life of our peoples. But we must begin the first steps in organizing our imagination with the ASEAN Law Association.

HUMAN RIGHTS IN THE PHILIPPINE SETTING*

*Edgardo J. Angara***

After about two years of lively debate, universal respect for human rights was given formal recognition by the United Nations when its members adopted on December 10, 1948, the Universal Declaration of Human Rights. In keeping with the principles proclaimed in the Charter of the United Nations recognizing the inalienable rights of all members of the human family, the General Assembly in 1966 adopted two landmark documents: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

In 1976, when the required number of states signified their ratification, the Covenants entered into force. From then on, international promotion and protection of human rights became a generally accepted principle in the law of nations, even as some states continued to withhold their formal acquiescence.

The twin covenants were meant to complement each other. Traditionally, there were only two categories. These were political rights and civil rights.

Political rights are those that assure citizens effective individual participation in government or public affairs, while civil rights guarantee persons some basic standards of human justice.

Among the political rights embodied in the UN Covenant are: all peoples' right to self determination; freedom against coercion, discrimination, and involuntary servitude; the inherent and fundamental rights to life, liberty, personal security; freedom of thought and conscience, peaceful assembly and association.

Internationally protected civil rights, on the other hand, include equal protection of the law; due process for all, including the accused person; right to personal property as well as the right of all peoples to freely dispose their natural wealth and resources. It should be of great interest to economically disadvantaged nations that the covenant

stresses that in no case may a people be deprived of its own means of subsistence.

Still another provision legally acknowledges the family as the natural and fundamental group unit of society entitled to protection by society and the State.

The General Assembly members have chosen to adopt a separate Covenant on economic, social and cultural rights. This was in the fullest appreciation of the need to emphasize the rights relating to the fulfillment of basic human needs.

This Covenant recognizes the rights to work, to the enjoyment of just and favorable conditions of work, to social security and social insurance, to adequate standard of living, and to freedom from hunger and ignorance. The State Parties also agree that "education shall be directed to the full development of the human personality and the sense of dignity."

Significantly, also recognized are rights of persons to the enjoyment of the benefits of scientific progress and their right to take part in cultural life.

Economic, social and cultural rights, sometimes referred to as "new rights," are the core of the individual's humanity. Already ratified by the Philippines, the International Covenant on Economic, Social and Cultural Rights clearly is the result of a stark realization that the traditional political and civil rights could well be meaningless in a world where poverty and deprivation prevail.

If I have gone to some length in citing specific rights in the UN Covenants, it is to emphasize that these documents are not just mere rhetorical niceties. On the contrary, I suggest that the Covenants represent a serious commitment to institutionalizing respect and promotion of human rights the world over.

The State Parties to the Covenants have accepted the duty to take steps by all appropriate means, individually and through international assistance and cooperation, to achieve the fullest realization of the rights recognized therein, within the country's resources.

It is against this international development that the Philippine situation must be examined, our country being a charter member of the UN as well as a signatory to the two Human Rights Covenants.

Human rights in the Philippines is well-rooted in tradition and antedated even our modern history. This is borne out by an examination of the structures and customary laws of Philippine society previous to the advent of colonialism and is demonstrated in the various movements and revolts during our colonial history. This tradition finds reflection in our modern constitutions, from the Malolos Constitution to that of 1935 as well as to that of 1973.

This tradition of adherence to human rights, when assessed within actual conditions of Philippine society, however, becomes paradoxical. On one hand, we have articulated in our laws respect for basic rights. On the other, we have a society in which the clamor for the realization of human rights has not only been unbroken but has become increasingly more insistent. How is this situation to be accounted for?

The Philippines, sharing characteristics of Third World nations, is striving to develop against tremendous odds. The great bulk of its fast-growing population is in rural areas and agrarian communities, where the material existence of people is exacerbated by poor communication and infrastructure and resulting in the ever increasing disparity and gap between urban and rural development.

Even in the urban centers, the uneven distribution of resources and benefits is quite evident. A great number of people belong to the class of semi-skilled workers who live on the edge of an industrial modernization just beginning to take place. We are confronted with a spectre of large slum areas amidst development and plush residential districts; of well-kept avenues that lead to rutted streets and alleyways.

It is no wonder that we feel an uncomfortable imbalance between the formal guarantees and the actual exercise or enjoyment of human rights.

To my mind, there are institutions in Philippine society whose orientation and operations have to be reexamined to ensure the full enjoyment of the guarantee of human rights.

The government is an abstract entity. It is through the various agencies and their personnel that the government sustains a tangible relationship with the public. People with causes for redress, or with needs to be attended to, appeal directly to these agencies.

Everyday, for instance, people flock to the Bureau of Lands, the Civil Service, the Foreign Office, the Ministry of Labor, the Police, the Military, the Courts expecting the rights guaranteed them by the State to be fulfilled. Their going to those agencies has something to do with such basic human rights as the right to life, liberty, and association, freedom from want and fear, or to gainful employment.

What they discover in the very act of fulfilling these expectations is that their presumed human rights are not only being thwarted but aggressively violated by red tape, their sense of dignity constantly humiliated by the long waits and the discourtesy of bureaucratic personnel. Their expectation of service, of redress of their complaints becomes an exhausting process. The ordeal may well compel a person to give up trying to assert his rights altogether. Under these conditions, the bureaucracy, instead of being a positive instrument in the fulfillment of rights, becomes a pervasive instrument of infraction upon them.

And when the individual goes to the judiciary for the adjudication of rights and obligations involving his person, his liberty, or his property, he finds not so much indifference as a tedious, harrowing experience that amounts to denial of his rightful claim to due process.

Finally, these institutional hindrances to the full attainment of human rights begin to condition the people themselves into a kind of passivity and, in effect, become themselves accomplices in the negation of human rights. Consider, for instance, the farmer or fisherman in Samar who would no longer resort to the judiciary because of past frustrations over the inaccessibility to justice; the neighbor or bystander who remains silent on unwarranted arrests, searches, or harassment because he does not want to be inconvenienced.

As against these institutional deficiencies in the enforcement of human rights in the Philippines, we have to consider, as I have observed earlier, the fact that by tradition and by statutory sanctions, we have a long historical commitment to human rights.

May I suggest the thrust we have to adopt if we are to create a climate hospitable to the enjoyment of human rights.

One focus of our efforts must be in the reorientation of our public institutions and our public servants. Their operations and functions need to be reviewed with the view to restore the Filipino people's confidence in the government's capacity and sincerity to respect fundamental freedoms as well as to promote the satisfaction of basic human needs.

To achieve this, change must take place in two levels: structures and attitudes.

It is a fact that government intervention in our lives is pervasive and intrusive. Innumerable rules and regulations of government agencies affect us from birth through marriage to death. Not unique to the Philippines, this phenomenon is spawned by the complexity of modern life and the ever increasing demand of the people for services.

However, where regulations and rules were initially intended to obviate human weaknesses, errors and corruption, their proliferation can and does result in creating a nightmarish procedure where services required can no longer be fulfilled.

We therefore see the need to device a system in our bureaucracy where efficient decision-making and work procedures could be carried out with dispatch. There are bright prospects in the horizon for us if we harness with judiciousness the benefits of modern science and technology. Perhaps the use of computers might expedite much needed services that the government agencies give to the people.

Some reforms in our judicial system also are worth highlighting as positive steps in this direction. Notably, there is the law that has established the *Katarungang Pambarangay* which requires conciliation and mediation of certain disputes at the barangay level before any court of law would take jurisdiction over such cases. Their implication on human rights is two-fold: (1) by declogging the court dockets, the courts can better serve the ends of justice; and (2) barangay "courts" reinforce the principle of participatory democracy.

Another example is in the field of agrarian law. Agrarian courts have been evolutionized to do away with superfluous formalities such as requiring documents to be in traditional legal forms. Such formalities could hardly have been fulfilled by farmers without a lawyer's intervention. The agrarian court judges are no longer confined to a stationary sala; they are enjoined to hold hearings out in the fields, if need be.

And more, a recent law has called for a major judicial reorganization. Its aim is to further fashion our judicial institution processes and court personnel that would more efficaciously render justice and equity to all.

Reorientation of values and attitudes must however accompany structural change for the operational unit is and will always be the human individual.

When an individual public servant becomes unfaithful to his sworn duty to render service, he is contributing to the erosion of the very institution that ensures his own human rights.

Ultimately, therefore, we must depend on our individual as well as our community sense of justice, fair play and discipline to ensure a more enduring respect for basic human rights and fundamental freedoms.

I commend the awardees this evening for giving human rights their continued concern even as they are able to give their specialized function in government such a distinguished mark. To the United Nations Association of the Philippines, I extend my congratulations for celebrating human rights today and therefore creating an occasion in our country where these very rights could be assessed critically.

I thank you.

NOTES:

*Address delivered during the 1981 Human Rights Day celebration at the PNC auditorium on 10 December 1981, sponsored by the United Nations Association of the Philippines and the Philippine Normal College.

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RECOGNITION OF HUMAN RIGHTS UNDER THAI LAWS*

*Viboon Engkagul***

Thailand has always subscribed to the principle of civil rights. To some extent, human rights of Thai people is officially recognized by every Thai Government. In the United Nations, Thailand voted for the adoption of the Universal Declaration of Human Rights in 1948. Apart from that, as a democratic country, it also has a Constitution as the basic law of the land to recognize certain fundamental rights and liberties of Thai citizens, similar to a westernized form of government.

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Thailand, among other U.N. state members, voted for the General Assembly's resolution by adopting the Universal Declaration of Human Rights in 1948. In fact the motive behind such a decision was rather a political one than its true commitment to the principles of the Declaration. At that time the country was in the desperate position and for the sake of its survival in the community of nations after World War II sought membership in the United Nations Organization. To achieve this goal its decision for the adoption of the Declaration was therefore unavoidable.

As a matter of fact, Thai governments have never been active in any way to implement the Declaration, *i.e.* they have shown their passiveness towards the programs of human rights organized by U.N. Thus, currently there are very few international conventions relating to the human rights in which Thailand is a contracting party.

In addition, the fact that so many prominent Thai legal scholars have even nowaday shown little faith in the Declaration has rendered the promotion of human rights in Thailand much more difficult than would

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*This paper was presented at "Access to Justice: A Workshop on the Promotion of Procedures for the Implementation of Internationally Recognized Human Rights" in Tagaytay, Philippines on February 14-19, 1982.

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have been expected. Because of this most Thai lawyers pay very little attention to the field of human rights. Some of them are worse than that since they do not regard them as the lawyer's concern at all.

Thai Constitution

The current Constitution of Thailand was promulgated on 22nd December 1978. It is the 10th Constitution of the Country since its political revolution in 1932. Realizing that Thailand is rich in Constitutions, it may be appropriate to indicate some background behind its political growth during the past 50 years. Theoretically speaking, the Thai Constitution is regarded as the highest Law of the country. It provides for a parliamentary system and form of government. It also guarantees certain individual rights and freedoms in accordance to the democratic way in Thai society. Essentially it is the source from which all laws, enactments, and acts can derive their legitimacy.

Thai Bill of Rights

Chapter 3 of the current Constitution can be regarded as the Thai Bill of Rights, since a number of basic rights and liberties are officially recognized. Frankly speaking, it is fair to say that most of the rights in the Declaration are acknowledged and some of them are implemented in full.

The basic rights and liberties set forth in the Thail Bill of Rights can be listed as follows:

(1) the right to equal protection by law and the enjoyment of political rights. (Sections 23 and 24).

(2) the right to freedom of religion, religious sect, belief, and worship (Section 25).

(3) the right to be secure from unlawful arrest, detention or search (Section 28).

(4) the right to be secure in the dwelling against the unlawful seizure and search (Section 32).

(5) the right of the alleged offender to be presumed innocent until proven guilty by final judgment (Section 27) including prohibition against *ex post facto* laws (Section 26), the right to obtain legal aid (Section 29), and the right to compensation upon false convictions (Section 30).

(6) the right of speech, writing, printing and publication (Section 34).

(7) the right to own property (Section 33).

(8) the right to be free from forced labor (Section 31).

(9) the right to peaceful assembly and association (Section 37).

(10) the right to form a political party (Section 38).
(11) the right to education (Section 35).
(12) the right to freedom of communication by post (Section 39).
(13) the right to freedom of travel and settlement (Section 40).
(14) the right of family (Section 41).
(15) the right to file petition of grievance (Section 42) and the right to sue a government agency or official (Section 43).

Restriction under the Bill of Rights

The rights under the above-mentioned Bill are subject to a number of restrictions. Apart from specific restrictions of each right, there is a general principle of restriction for people to enjoy their rights. Section 45 says:

> "No person shall exercise right and liberty under the Constitution against the Nation, religious, the King, and the Constitution."

It is clearly understandable that the basic rights of Thai people are subject to other elements *viz*: national security, religion, and the monarch. As a matter of fact the sense in Section 45 is quite vague and can be interpreted broadly. Practically all actions can be interpreted to endanger the national security, religion or the monarch. It is doubtful whether the recognition of the Thai people's rights will be of any value in term of practice under such interpretation.

May I turn the issue to other aspects such as specific restrictions on the exercise of one's rights and liberties?

Beginning with Section 22 the rights and liberties of Thai people are subject to the provisions of the Constitution. It does not clearly tell us anything about the specific provisions to which the rights and liberties are subject, and to what extent.

With regard to political rights in Section 24, there is no definite meaning to be given as to what constitutes political rights. Additionally, it is provided that the political rights will be exercised in accordance with *"the provision of the laws."*

There are so many similar restrictions, using the phrase *"in accordance with the provisions of the laws"* as well as *"conditions and means required by laws"* or *"must be in compliance with the laws"* in other Sections in the Bills of Rights. Another way to use the restrictions is first to state a particular right and end with the phrase, making an exception, such as *"by virtue of the law provisions"* or *"to preserve the national security or the protection of other persons' rights, liberties and reputation"* or *"in the maintenance of public order or good moral."* etc.

It is worth noting that the concept of contemporary Thai jurisprudence has recognized the power of the military mechanism which toppled down the lawful government. According to a precedent setting Supreme Court judgment of Thailand, it is held that the leader of any *coup d'etat* who successfully takes over the power from a lawful government is deemed the supreme ruler of the government. Therefore any decrees or commands issued by him during his power will be regarded as laws equal to the action of the parliament. In the past 50 years of Thai political history, there have been so many successful *coup d'etats* and revolutions, and all legislation enacted by means of revolutionary decrees still considered law. There is no doubt that all these legislations were enacted in contradiction to the ideology of human rights.

All these legislations are still regarded as "the provisions of the law" in the current Thai Constitution.

Enforcement of Human Rights

In many parts of the world today, it can be easily seen that human rights of the people cannot be enforced. In some countries the situation is too hopeless to be relieved. However, the condition is optimistic in Thailand now; we have a better trend for enforcement of human rights than in the past years.

It is axiomatic that in dealing with human rights, people must possess suitable means to enforce their rights. Hence the people of the world should share their experiences and means to enforce their rights. The means which I would like to discuss here are (1) the Judicial Review and (2) the Constitutional Tribunal.

1) *Judicial Review.* The Thai judicial system is established to follow the form of western countries. At the time of its establishment, the country was under an absolute monarchy during the reign of King Rama V. With such a long history, it is fair to say that most Thai judges naturally hold a passive view on human rights issues. Under prevailing political conditions, access to judicial remedies against any violation of human rights in Thailand seems to be difficult.

2) *Constitutional Tribunal.* Under the current Constitution, the Constitutional Tribunal comprises of 7 members, *viz,* the Speaker of the Parliament, the President of the Supreme Court, the Director-General of the Public Prosecution Department, and other highly qualified persons appointed by the Parliament. The Speaker of the Parliament is the Chairman of the Tribunal.

The main duty of the Tribunal is to determine whether any of the legislation of the Parliament is in contradiction with constitutional provisions. It therefore has no duty to grant any remedy for any violation of human rights of Thai people.

Conclusion

From what has been discussed above, we may come to the conclusion that the legal protection of human rights in Thailand is still inadequate. The main reason for such inadequacy is the lack of effective remedies and procedure to protect any breach of rights.

In any event, human rights in any society will depend on its political development. At present, Thailand has not yet achieved its political maturity in terms of the Western world's yardstick.

ACCESS TO JUSTICE: LEGAL ASSISTANCE TO THE POOR IN MALAYSIA*

Abu Baker Bin Anang

THE PRINCIPLE BEHIND THE LEGAL AID SCHEME

One of the fundamental laws of all democratic countries which subscribe to the principle of the Rule of Law is that there should be equal justice for the rich and poor alike. This principle has been spelt out in Article 8 of the Constitution of the Federation of Malaysia which reads "All persons are equal before the law and entitled to the equal protection of the law." This concept however, does not always work in practice. The law though apparently equal in its application to the rich and the poor alike, may still be discriminatory in its effect.

One clear example can be found in civil cases where poverty can be a barrier to justice. The poor and illiterate having neither the information nor the economic resources to defend themselves are unable to bargain on equal terms with their richer counterparts.

One way of making justice equally available to everyone is by devising a system which provides free or inexpensive legal counselling service for the poor, the illiterate and the ignorant, and when necessary, to provide legal representation for them in the Courts of Law. And we call this system Legal Aid.

Such a system, however, involves complex problems and requires the participation of both the Government and members of the legal profession. This is the basis on which the Legal Aid service in Malaysia has been moulded.

HISTORICAL BACKGROUND

The creation of a Legal Aid Bureau was thought of way back in 1954, but the first positive step towards the implementation of such a Bureau was taken by the Government only in 1960. This was brought about as a result of a letter written earlier in the same year by an *Almoner* of Kuala Lumpur General Hospital for and on behalf of patients in that ward suffering from serious residual disabilities for which compensation

could be obtained had they been informed of their rights and if they had been regally represented.

At that time, and indeed until the passing of the Ordinance relating to legal aid and advice, Legal Aid could only be given in this country to: (i) government servants in cases of legal proceedings connected with their official duties *vide* Public Officers (Conduct and Discipline: General Orders Chapter D Regulation 1969); (ii) poor persons *in forma pauperis vide* the Rule of Supreme Court 1957; and (iii) persons charged with criminal offences involving capital punishment *vide* the Criminal Procedure Code F.M.S. Cap. 6.

Meanwhile, the women's organizations throughout the country also demanded that steps be taken by the Government to assist the widows, divorcees and children in their fight for justice against their recalcitrant husbands and guardians for maintenance and alimony. The matter was referred to the Attorney General and the Bar Council.

A committee was appointed to investigate this matter and the committee's findings led to the introduction, in September 1970, of a pilot scheme for Legal Aid and advisory services, and a sum not exceeding $100,000 was authorised for this purpose.

THE ACTS GOVERNING LEGAL AID SCHEME

To begin with, the Emergency (Essential Powers) Ordinance No. 39 of 1970, which came into force in September 1970 governed the Legal Aid Scheme.

The governing Act is the Legal Aid Act of 1971 which came into effect on 24th April 1972, and to assist the Legal Aid Bureau, the Minister promulgated the Legal Aid and Advice Regulations of 1970.

PURPOSE OF THE LEGAL AID BUREAU

Its objectives are two-fold:

i) to provide for a social need which was lacking in the past, and

ii) to strengthen further the application of the legal maxim "equality before the law".

It is not meant to abolish the legal assistance available before the coming into effect of the Legal Aid Act but to complement it.

ORGANIZATIONAL STRUCTURE

The starting point of the Organization was in the form of a pilot scheme in Kuala Lumpur. The Bureau set up its first office in the humble low wooden buildings abandoned by its previous occupant. After a year of fruitful service to the poor and armed with the vital information and experience acquired during this period, the Bureau was able to

launch its expansion programme to other states. Today, after a little over seven years of its inception, all the 13 states in Peninsular Malaysia are enjoying the services of this Legal Aid Scheme. There are no branches in Sabah and Sarawak at the moment.

The Organizational Structure of the Bureau is made up of the Headquarters Office which is concerned with all the planning, research, coordination and administration, and the States' Bureaus discharging their regional functions.

The Headquarters of the Legal Aid Bureau which is situated at Kompleks Pejabat-pjabat Kerajaan, Jalan Duta, Kuala Lumpur, is headed by a Director. The other staff include a Deputy Director, Second Legal Assistant, interpreters and the usual complement of office staff. The individual State Bureau is manned by an Assistant Director, also a Legal Officer of the Judicial and Legal Service, one interpreter, three clerks, a typist and an office boy.

When the Legal Aid Bureau was first established in September, 1970, the total staff complement was only 8, comprising the Director, one Second Legal Assistant, three interpreters, one clerk, one typist and one office boy. The 1978 Establishment list stands at 100 personnel.

This Bureau comes under the direct control of the Attorney General. For the purpose of advising the Attorney General on the administration of the Legal Aid Act, a Legal Aid Council has been established and it consists of, not less than three but not more than five members appointed by the Attorney General from among persons with experience or special knowledge with regard to the workings of the courts and the social condition of Malaysia.

The Director is a senior Legal Officer appointed from members of the Judicial and Legal Service of the Federation and for the purpose of assisting the Director, there has been established the Legal Aid Board consisting of not less than two Solicitors whose names are on the Panel of Solicitors maintained by the Legal Aid Bureau. In every application for Legal Aid, the Director decides on the Means Test, *i.e.* whether the applicant is entitled to legal aid by virtue of his earnings, and the Board decides on the MERIT of the case.

The modus operandi of the scheme is as follows.

The Government provides the office accommodation, the staff and the officers who are the Director, Deputy Director and a number of Assistant Directors – one for each State. The Government also provides a fund from which legal fees are paid. Private lawyers volunteer to serve on our Panel of Solicitors. All cases dealt with by the Bureau are processed and, whenever possible, taken up in Court by the Legal Aid Bureau's Officers. Other cases are assigned to be conducted by these paid lawyers.

THE ROLE OF PRIVATE LAWYERS

The Bureau is supported by a Panel of Solicitors who are registered practitioners in the High Court of Malaysia. In 1970 when this Bureau started its operation only 38 lawyers in the Federal Capital volunteered to be on the panel. The subsequent response has been encouraging and this figure was raised to 268 lawyers by 31 September 1978.

From the very inception of the Bureau, the Bar Council of Malaya showed keen interest and has given us all the support we needed. They serve, at our request, either as advocates and solicitors for our clients in any court, as our advisers, or as members of the Legal Aid Board.

As our advocates and solicitors or advisers these lawyers are paid a token fee of about M$170-US$80 for every case but a number of these lawyers do not accept any fees from us. Also, as our advocates and solicitors, these lawyers are given every facility and assistance so that they can perform their assignment without any hindrance and as our agents they are afforded the same privileges and immunity as the other permanent officers of the Legal Aid Bureau.

The private lawyers also serve on the Legal Aid Board, chaired by the Director of this Bureau, with not less than two members of the legal profession chosen by rotation. In every application for legal aid the Director decides on the means or the earning capacity of the applicant while the private lawyers on the Board decide on the merit of the case.

In accordance with the Legal Aid and Advice Regulations of 1970, these lawyers are paid half the taxed costs and full reimbursement of the expenses incurred for conducting cases on our behalf in the High Courts, while in the Subordinate Courts they will be paid M$100 for each day's appearance, M$50 for getting-up fee and M$20 per interview with the client. No limit is placed as to the number of interviews to be held with the clients. This amount may be varied at the discretion of the Director depending upon the number of days of appearance and the complexities of individual cases.

THE ROLE OF WELFARE OFFICERS

Beside its own Officers and Panel of Solicitors, the Bureau has been assisted by a team of Welfare Officers made available to us by the Ministry of Welfare Services. These officers are no doubt be useful in assisting us in the investigation into the means of the applicant for Legal Aid as well as to the desirability of assisting them.

These Welfare Officers are trained officers and in the course of their work have acquired a special experience in human behaviour, particularly among the poor and illiterate and as they are trained in human

psychology and behaviour, their expertise in these fields is always welcomed by the Bureau. The Welfare Department has its regional officers in all the district capitals in each State unlike the Legal Aid Bureau which has its officers only in the capital of each state, and as they are closer to the public their assistance is sought every time.

ELIGIBILITY FOR LEGAL AID

Eligibility for legal aid is determined by a Means Test and every applicant for legal aid is required to make a statutory declaration as to his income and property. As a rough guideline, a person, whose disposable income is less than M$13,400 per month and whose property (other than wearing apparel, tools of trade, household furniture and a small dwelling house) does not exceed M$500.00, is entitled to free legal aid. However, for a person whose income is not more than about M$330.00 per month and whose value of property does not exceed M$3,500.00 is given aid but is expected to pay some contribution towards the cost. The figures quoted refer to a single person. Persons with wives and children are assessed at a higher income level.

Having fulfilled the above conditions, the applicant must then satisfy the Board, consisting of the Director and two Solicitors from the Panel, that he has reasonable ground for taking, defending and continuing to be a party to the proceeding.

Under the Legal Aid Act, a person applying for legal aid in criminal cases should do so with the Magistrate, President or Judge before whom the case is being tried. The trial judge then refers the matter to the Director of Legal Aid. In civil proceedings, however, the application has to be made directly to the Director.

An applicant for legal aid need not worry about the procedure for getting assistance. All he has to do is to call at the Bureau and pay one dollar statutory fee. The rest, including filling of forms, will be done for him by the officers and interpreters specially trained to do this job.

Under the legal aid scheme, an assisted person enjoys tremendous benefits in any litigation in which he may be involved. The service of a lawyer, the attendance of witnesses, court fees, legal documents and various other expenses of litigation will cost him nothing or will be made available for a small fee. If he wins the case he can recover costs from his opponent; when he loses his liability against costs is protected. For this reason, vigilance must be observed in screening these seeking legal aid, and, if by chance, they are found to abuse this service by deliberately underquoting their income, they should be mercilessly brought to book in a Court of Law.

CASES ARE DEALT WITH UNDER THE SCHEME

The primary objective of the service is to provide legal aid and advisory service to the poor on most legal problems affecting them. The scope of such assistance is contained in the 2nd, 3rd and 4th Schedules of the Act. When it was first introduced in 1970, the service was confined only to matters relating to civil proceedings i.e. proceedings relating to maintenance, custody, divorce and joint property in Courts administering Muslim Law (*syariah* or *kadi's courts*) and where any person or advocate was authorised to appear, and to one under the advisory service. Today the Legal Aid Bureau provides full aid and representation in respect of mitigative plea in criminal proceedings, nine matters relating to civil proceedings, and three matters for advisory services.

In criminal proceedings legal aid is afforded to all cases where the accused pleads guilty to the charge and the officer of the Bureau will make a plea in mitigation for leniency before the sentence is passed.

Full aid is given in proceedings under the Married Women and Children (Maintenance) Ordinance 1950, Maintenance Orders (Facilities for Enforcement) Ordinance 1950, Married Women and Children (Enforcement of Maintenance) Act 1968, proceedings relating to maintenance, custody, divorce and joint-property in courts administering Muslim law *(syariah* or *kadi's court)* and where any person or advocate may be authorised to appear, in respect of rights and liabilities under the Workmen's Compensation Ordinance 1952, under the Padi Cultivators (Control of Rent and Security of Tenure) Act 1967, under the Road Traffic Ordinance 1950, under the Moneylenders Ordinance 1951 and the Small Estate (Distribution) Act 1955. Legal advice is given in respect of rights and liabilities relating to non-Muslim divorce and custody, tenancy and matters relating to hire-purchase.

The above jurisdiction may be broadened by the Minister of Law as and when he deems fit.

In addition the concept of legal aid has been broadened to include informative service involving the giving of talks and free counselling service on legal matters to rural dwellers. A scheme called the Legal Aid Rural Counselling Service has also been devised whereby the officers and staff from all the Legal Aid Bureau branches periodically travel to various outlying areas in their states to give on-the-spot aid and advice. The response has been overwhelming and to date there have been registered with us 19,447 cases.

LEGAL EDUCATION IN SINGAPORE*

*Tan Sook Yee***

The institution concerned with basic legal education in Singapore is the Faculty of Law, University of Singapore. It was established in 1957. The other institution which is also concerned with legal education is the Board of Legal Education set up in 1967. The concerns of the Board of Legal Education are with the preparing and examining of persons for law practice in Singapore.

FACULTY OF LAW, UNIVERSITY OF SINGAPORE

The three degrees offered by the Faculty of Law, University of Singapore, are the Bachelor of Laws, the Master of Laws and the Doctor of Philosophy.

BACHELOR OF LAWS

The Bachelor of Laws is an Honours degree of four years duration taken full-time. Part-timers however take two years longer. In the initial years of the Faculty there was a good response to the part-time course. However in the course of the years the part-time course has become virtually non-existent. The reasons for this could be several. The length of the course, the gruelling nature of law studies and the fact that no special classes are run in the evening for part-timers so that they are obliged to attend classes during normal working hours may be some of the reasons for the disappearance of this species of law students.

CURRICULUM

The LL.B. Singapore is the first degree in law. It is at the same time an academic as well as a professional qualification;[1] "... it must provide, first and foremost, a university education in law and secondly, if that is consistent with the first objective, it must so frame its bachelor's degree

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*Paper presented before the Conference on Legal Development in ASEAN Countries in Jakarta, February 5-10, 1979 under the auspices of the National Law Development Center, Ministry of Justice, Indonesia.

**Dean and Associate Professor of Law, National University of Singapore

[1] The LL.B. holder is a 'qualified' person within the Legal Profession Act 1970, Singapore Statutes Cap.

that it will be acceptable as a professional qualification without further formal instruction in substantive or objective law ..."[2] It is this twin function that has determined the curriculum content and it is this duality of function of the degree that has prompted the revision of the curriculum from time to time.

The present curriculum came into operation ten years ago. The objectives of this curriculum are firstly to teach the basic "bread and butter" subjects. These are: Introduction to Law, Criminal Law, Torts and Contract Law in Year I, and Family Law, Company Law, Public Law and Land Law in Year II. In the Third and Fourth years the students are required to read four compulsory subjects, Trust and Evidence in Year III, Administration of Criminal Justice and Civil Procedure in Year IV, and three optional subjects in each of these years. The compulsory courses are again the basic courses and those subjects which a practitioner would need to know.

Secondly, the curriculum is designed so as to enable a student a choice of subjects to suit his inclination and ability and yet ensure that he would have exposure to "perspective" courses as well as the more technical and specialised subjects. By "perspective" courses is meant those subjects which compel students to appreciate and understand the individual subjects which they had studied in relation to the whole legal system, courses which show the interrelation of law and society, which focus on the purpose and function of law. Jurisprudence, Law and Society, and Comparative Legal History are examples of "perspective" courses. The curriculum also permits a student to take at the maximum two non-law courses offered by the other Faculties. The availability of these courses is made not only on the assumption that some knowledge of non-law subjects is good in itself but also that these courses would enhance the students appreciation of the law subjects.[3] Hence they are offered to the students in the later years rather than in the initial years of their law studies. The students are not given a complete free hand in the choice of non-law subjects: their choice is within the selection of subjects made for them by the Dean. The criterion which the Dean uses in making this choice is the supportive or contextual element of the non-law courses to the law courses taught. For example, the non-law subject of Sociology of the Family offered by the Department of Sociology is available to the law student for it should place him in a better position to evaluate the laws relating to marriage, divorce, legitimacy.

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[2] Calvert, Coomaraswamy and Sheridan, *Legal Education in Malaya*, 1960 J.S.P.T.L. 155.

[3] See T.T.B. Koh, *Legal Education in Singapore*, 9 Me Judice 21, 25 (1968).

Likewise appreciation of the subtleties of Public International Law would be enhanced if a student were to study a subject in Political Science.

For the students who desire only to know more specialised law subjects, there is a list which includes such subjects as Revenue law, Banking, Insurance and Shipping Law to name just a few.

The problem which the Law Faculty faces in respect to its curriculum is the desire on the one hand to minimise the practical incompetence of the law graduate with the other function of a law school which is not only to train "journeymen practitioners" but also "the men who must be leaders and set the standards and tone, and provide the imaginative insights for an important part of the community for many years after leaving law school."[4]

As Prof. T.T.B. Koh asked[5] "is it the purpose of the Law School to prepare its students for the practice of law or to give them a liberal education through the medium of law?" In an earlier article on "Legal Education in Malaya"[6] the authors indicated that these two seemingly opposed objectives are not so. "They are consistent because ... the antithesis between academic and professional training is largely illusory."[7] T.T.B. Koh endorses this view and explains the non-conflict. He states, "The purpose of the Law School is two-fold. It is first, to develop the law students' ability to think logically, to differentiate between the relevant and the irrelevant, to communicate thought effectively and to discriminate among values. All these qualities are necessary for the successful practice of law. The second purpose is to give law students a deep understanding of the nature of the legal process and of the basic principles of law. This knowledge is also necessary for the practice of law."[8]

However, the recurrence of curriculum changes in the Law School indicates that while in theory and in logic the conflict between the two aims of the law school is more apparent than real, in practice it may be different. Practitioners demand that the law graduate should be able to handle problems of law practice deftly almost from the first day of life as a practitioner. So it has often been suggested to the Law Faculty that

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[4] Dean Griswold, *The Future of Legal Education*, 5 Journal of Legal Education 438, 443-4 (1953).

[5] T.T.B. Koh, *op. cit.*, p. 25.

[6] Calvert, Coomaraswamy, and Sheridan, *Legal Education in Malaya*, J.S.P.T.L. 155 (1960).

[7] *Ibid.*

[8] T.T.B. Koh, *op. cit.* at pp. 25-26.

Conveyancing, the life-blood of a Singapore practising lawyer, should be made a compulsory subject. The current availability of this subject as an option is to this group of practising advocates and solicitors insufficient. On the other hand there are those who feel that the Law Faculty should not pander too much to the demands of practitioners at the expense of its role as an academic institution where minds and intellects are developed.

It is said that it is not the subject but how it is taught that is important so that a very practical subject like Conveyancing, or Civil Procedure can be taught in such a way that it is much more than the imbibing of rules. It is said that there need not be such conflict between what is practical and what is academic. The truth of this is not disputed. However in practice it is difficult to achieve as it demands a teacher who is familiar with the rules and who can teach them in an intellectual way. Moreover in the rather limited time of one academic year there is a tendency, where a choice has to be made, to sacrifice the teaching of the "wherefores" and "oughts" for what "is." The many changes, in the early years, of the Law Faculty's curriculum reflect the swing between the different schools of thought. The existing curriculum is a compromise. The technical and relevant (in terms of law practice) subjects are available as options, likewise the seemingly less relevant but intellectually demanding subjects. The scheme of options is devised to ensure that the students are exposed to some subjects from each category.

There is a close interrelation between phases of a country's growth in its social, political, and economic aspects, and law.[9] Thus lawyers should be suitably and adequately equipped not only to react to changes when they come but to take a lead in effecting them. This is another demand on the Law Faculty which affects curriculum content as well as how the subjects should be taught.

Thus the current curriculum content reflects an attempt by the law school to satisfy all three objectives as stated. The long list of compulsory subjects seeks to satisfy the demands of the profession that a graduate school emerge from the law school equipped with some basic knowledge of the subjects with which he would most likely be confronted as a practising lawyer. The list of "perspective" optional subjects and the availability of certain non-law subjects to the senior students reflect the other demand on the law school to produce a graduate

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[9] See S.M. Thio, *The Role of the Law Schools in the Developing Nations*, 11 Malaya L. Rev. 250 (1969); M. Cheang, *Legal Education and its Role in the Future of Singapore*, 4 LAWASIA 53 (1973).

with a liberal education in law. Finally, the list of specialised optional subjects seeks to satisfy the student who desires to specialise at this stage of his career. By this list of optional subjects the law school hopes to offer subjects that reflect the particular needs of the country.

TEACHING METHODS

The most common method of instruction is the bi-weekly lectures followed by a tutorial. This method is used where the number of students taking the course is large. The other method of instruction is through seminars. This is used where the number of students taking the course is smaller.

Within these two main methods of instruction there is much diversity. The tutorials can be grouped into two kinds, those which are closely structured with problems set in advance for discussion and those which are totally unplanned and free-flowing. The latter style makes greater demand of a tutor and different groups would have different tutorial content. For this reason where there is more than one teacher for the course and when there are younger teachers the closely structured tutorial is to be preferred.

Seminars, too, differ in that in some, students are required to deliver papers on given topics. These are then subjected to criticisms from their colleagues. In others, the teacher leads the seminar discussion. Where students tend to be quiet and unresponsive to the teacher's questions, the type of seminars where students are required to prepare papers and to discuss them, are more successful.

Lectures also differ in style. Some lectures are conducted in the case class and problem method, others seek to lay down the broad framework of the subject, yet others concentrate on individual problem areas in a given subject. Of these it would be fairly true to say that the case class and problem method has not taken firm root as yet. The reasons are many, but perhaps the main reasons would be the relative inexperience of the teachers who themselves may never have been exposed to such a method of instruction. Moreover the problem is compounded by the general reticence of Singapore students. Successful case classes have been conducted where the classes are smaller and where there are casebooks on the subject. The remaining styles of lectures are determined by the availability of text books on a subject. Where these exist then lecturers may with ease of mind concentrate on the problem areas leaving the students to cover the syllabus on their own. However, where there are no adequate text books the lecturers are compelled to cover the syllabus.

EXAMINATIONS

Whatever the disadvantages of sit-down examinations they are a necessary evil of educational institutions. It is the acknowledged task of educationists to minimise the limitations of the system; these are mainly that the 3-hour paper tends to tax the memory rather than intelligence, that there is too much concentrated pressure on the student at the end of the year, and that there is hardly any approximation to the conditions a lawyer is likely to work under in real life.

In the Law Faculty we are mindful of the defects of the traditional 3-hour sit-down examination although they form the main method of assessment. To answer the criticism that such examinations tend to tax the memory powers of students rather than intelligence, students are permitted access to relevant legislation in the examination hall. Lately we are also trying out the 'open book' examination.

The drawback of this is that some students feel that as the cases and other material will be available in the examination hall they need not be so familiar with them before the examination. This is of course not so.

In addition to the 3-hour sit-down examination, in most courses the final assessment is also dependent on classroom performance and performance in a term paper. The weight attached to these various methods of assessment is generally 10% for class performance, 20-25% for term papers and the balance to the end-of-year examination.

Most of the assessment is based on a student's written work. Apart from class performance, in the Final Year's examinations students may be called for a *viva voce* to determine the precise grade that a student should have where some doubts on this are raised on his written work.

In keeping with the thinking that a student's final grade or class should not be based merely on the final year's work, but that his other years' performance should also be reflected in his final ranking, the results of the students performance in the second, third and fourth years are weighted in the following manner *viz*. 20% for the second year, 40% for the third year and 40% for the fourth year.

MASTER OF LAWS

The degree of Master of Laws is open to any person who is either a LL.B. degree holder from the University of Singapore or to graduates in law from any other University that the Senate may approve.

The degree is currently obtainable only by way of submission of a thesis of about 40,000 words. This has to be written under supervision of one of the members of staff of the Law Faculty. The minimum

period of candidature is 1 year and the maximum period is 3 years. Currently there are persons registered for the degree. They are lawyers doing it on a part-time basis. Because of this there have been many casualties. Another constraint on the LL.M. programme is the availability of suitable persons on the staff for supervision. The Faculty is a small one and much if not all of its resources are spent on undergraduate teaching.[10] It has been said that in view of the rigour of an LL.M. by thesis bearing in mind that the bulk of our LL.M. candidates are doing it part-time, the LL.M. by coursework and mini-thesis should be resuscitated.[11]

Such a LL.M. programme could be the answer to two discernible problems of the Law Faculty and of the legal profession. As indicated earlier the Law Faculty's list of optional subjects try to take into account the desires of a student to develop a certain amount of specialisation. Some of these subjects are really too demanding for an undergraduate course. Further there seems to be a growing demand by young lawyers for acquiring knowledge in those subjects which they never did while in law school. There is no way at the moment whereby they could get such training except through exposure and osmosis in practice. Thus if there be such an LL.M. programme then those graduates who wish to specialise in a given area of law may do so at postgraduate level. This would also provide a kind of continuing legal education for the younger lawyers. The availability of such a programme would then necessitate a review of the undergraduate optional subjects, so that instead of adding more subjects to the list to meet with the changing needs of society, it should be the LL.M. courses that should be determined on this criterion.

THE DOCTOR OF PHILOSOPHY

The Doctor of Philosophy in Law is open to a person holding a Master's degree in law either from the University of Singapore or from any other University approved by the Senate. It is obtained by the submission of a thesis of about 80,000 words on an approved topic written under the supervision of a member of staff.

The minimum period of candidature is twenty-four months and the maximum period is sixty months. To date there are only three persons who hold the Ph.D. in law from the University of Singapore.

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[10] See S. Jayakumar, *Twenty-one Years of the Faculty of Law, University of Singapore: Reflections of the Dean*, 19 Malaya L. Rev. 1, 18-19 (1977).

[11] *Ibid.*

THE BOARD OF LEGAL EDUCATION

The Board of Legal Education was established by the Legal Profession Act[12] with the task of providing training, education and examination of persons intending to practise law in Singapore. The Board is made up of the Attorney-General, a judge of the Supreme Court, four representatives of the legal profession two nominated by the Minister for Law, and two nominated by the Law Society, the Dean of the Faculty of Law University of Singapore and two other representatives from the Faculty of Law.

In order to gain admission to the practice of law, a person must be firstly a "qualified persion" who is defined in the Legal Profession as (a) a holder of a LL.B. from the University of Singapore; (b) a barrister-at-law of England or of N. Ireland or a member of the Faculty of Advocates in Scotland; or (c) a solicitor in England or N. Ireland. Secondly, he must successfully undergo the three-month postgraduate practical course run by the Board of Legal Education and then he must fulfill a six-month period of pupillage with an advocate and solicitor who has been in active practice in Singapore for a period of five out of seven years.[13]

The Postgraduate Practical course which prepares a 'qualified' person for practice is organised and run by the Board of Legal Education with the aid of a part-time honorary Director.[14] The courses are taught by practising lawyers and members of the legal service on a part-time basis. Accordingly, most of the classes are conducted in the evenings after office hours. In addition to attending these classes, the students are also required to do such written work as may be assigned by the teachers of the course and to pass such examinations as may be held.

It will readily be conceded that the best training for practise is practice itself. This I would imagine is the rationale of reading in chambers for budding barristers and articleship for aspiring solicitors. However the ideal has to be trimmed to accommodate the constraints of numbers of law firms able to respond to the need and the number of persons seeking chambers.[15] In any event it was also thought that even

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[12] 1970 Singapore Statutes Cap. 217.

[13] *Ibid*, § 11.

[14] When it was first instituted in 1961 the course was organised by the Dean of the Law Faculty and taught by practising lawyers on a part-time basis. However this state of affairs was corrected in 1975 when the organisation of the course was transferred to the Board of Legal Education.

[15] In any event there are dissatisfaction with this type of professional training which is dependent on the conscientiousness and competence of the Master. See Report of the Committee on Legal Education 1971, Cmnd 4595 at p. 42.

some aspects of practice can be effectively "taught" to groups and even made examinable. Thus in 1961, the first Postgraduate Practical Course of 3 months was instituted. The subjects now taught in this course include Advocacy and Trial Practice, Bankruptcy and Winding Up, Incorporation and Registration of Companies, Practical Conveyancing, Solicitors & Trust Accounts, Taxation of Costs, Professional Ethics, Legal Drafting, Admiralty Practice, Criminal Procedure and Probate and Administration. On the whole this course may be considered as successful, but some complaints nevertheless exist. Although much improved, the course still lacks consistency in standards expected of the student in the different courses. Further whilst there is more written work now it is still insufficient. The cause of this rests mainly on the fact that it is very difficult to get persons who have the right credentials to teach two hours a week for three months of a year. Practitioners with the experience are busy people, it is a tremendous sacrifice on their part to engage in part-time teaching in the Postgraduate Practical Course. Additionally there is a problem of co-ordinating the courses so that they would be conducted at a similar level and would complement one another. This is the task of the Director who has been and still is doing the work on a part-time basis. Fairly senior practitioners who have the inclination and who are prepared to find the time can only take on this demanding post for two to three years at a stretch. Thus, there is need for a full-time Director who could not only coordinate the courses but also set down some guidelines on course requirements and syllabi so that even if different persons were to teach a course in different years the variation in course content and standard would be minimised. Such a post calls for a practitioner with considerable experience and such a person would only be enticed from what is certain to be a lucrative practice by an attractive salary and conditions of work. Thus it was only when the Law Society finally agreed to support the cause that the Board of Legal Education could at least agree to advertise the post.[16]

The other criticism of the course attacks the very notion that practice know-how can be taught by the traditional classroom methods. This criticism is in many respects valid. It is not disputed that the Postgraduate Practical course should not duplicate and telescope what has been taught in four years at undergraduate level in 3 months. It should train students by requiring students to perform the tasks that would be expected from them as practising lawyers, in short they should be made to do exercises under supervision and subject to correction. If this is the

[16] The advertisement combines the position of Director of the Postgraduate Practical Course with that of Secretary to the Law Society.

mode of instruction then the institutional method of intraining has the following advantages.[17]

Firstly, all students would be exposed to all of the more commonly met-with tasks of practitioners. This would to a great extent answer some of the usual criticisms of intraining schemes (pupillage) that a set of chambers may not have the varied work, it may be too specialised; that a master may be too busy to be able to instruct his pupil. Secondly, in view of the growing number of "qualified" persons there is increasing difficulty in finding a set of chambers for all persons who wish to be called to the bar. Institutional intraining would to some extent alleviate this problem.

It is hoped that on the appointment of a suitable person as a full-time Director the Postgraduate Practical course could be improved so that even with part-time teaching by practitioners it would better serve its object of providing a link between the undergraduate University training and actual life as a practising lawyer.

PERIOD IN CHAMBERS

In addition to attending the 3 months Postgraduate Practical course as described above an aspiring advocate and solicitor has to "read in chambers" for a period of 6 months with a practising lawyer of not less than 7 years experience.[18]

This aspect of the professional training is part of our Common Law heritage. Prior to the institutionalising of a part of intraining by the 3 months Postgraduate course, the length of compulsory pupillage prior to being called to the Bar, was 9 months. The reason for retaining the system of pupillage albeit for a shorter period of time is probably attributable to some skepticism as to the efficacy of the postgraduate practical course. Moreover 3 months is too short a time within which to fully prepare the graduate for actual practice. In any event however good the institutional intraining programme, a period of pupillage or articleship is probably still necessary, for there is no better place to learn the practice of law than in a law office.[19] Indeed if the standard of the legal profession is to be maintained, young lawyers should not be allowed to practise on their own immediately upon their being called to the Bar.

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[17] The practical training of law graduates for admission to the legal profession in Ontario, Canada has such a scheme. See Report of the Committee on Legal Education 1971 Cmnd 4595.

[18] § 11 (2), Legal Profession Act 1970 Singapore Statutes Cap. 217.

[19] *Cf.* T.T.B. Koh *op. cit.* at p. 34.

ARTICLED CLERKSHIP

"Articled clerks" are persons who are attached or "articled" to practising advocates and solicitors. Usually they are persons who are employed in the firms of their "principal" in executive positions. The period of articles is generally not less than five years. However for graduate of a university (not necessarily in law) the minimum length of articled clerkship is three years. During this period he is required to sit for and pass such examinations as are stipulated by the Board of Legal Education.[20]

This route to the legal profession has hitherto not been too popular for the chances of success are fraught with difficulties. For persons who could not for various reasons, study law in the University of Singapore but who desired nevertheless to practise law the easier alternative to articled clerkship was to get called to the English Bar.[21] It was easier in the sense that they could study for these examinations via correspondence courses. However with the change in entry requirements of the Council for Legal Education in England, it may be that the articled clerkship route to the profession would be resorted to more often.[22]

SUMMARY AND CONCLUSIONS

The problems in the field of legal education may be posed in the following contexts: (1) the LL.B. degree offered by the Faculty of Law (2) the postgraduate professional training (3) the continuing legal education of members of the profession.

LL.B. DEGREE

The basic problem here is one of curriculum content as a result of the LL.B. degree being also a professional qualification. "The professional lawyer requires general and broadbased education to enable him to adapt himself successfully to new and different situations as his career develops; an adequate knowledge of the more important branches of law and its principles; the ability to handle fact both analytic-

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[20] Currently there are four examinations: the Intermediate Part I covering Contract, Tort and Criminal Law & Procedure, Intermediate Part II covering Public Law, Land Law and Evidence, the Final Part I covering Estates & Trusts, Conflict of Laws, and Commercial Transactions and Final Part II covering Conveyancing, Revenue Law, Associations and Civil Procedure.

[21] Under § 2, Legal Profession Act 1970 a person who has been called to the English Bar included as is a "qualified" person.

[22] There are currently 15 persons registered as articled clerks. There are altogether 3 persons who have gained entry to the legal profession via this route.

ally and synthetically, and to apply the law to situations of fact; and the capacity to work, not only with clients but also with experts in different disciplines. He must also acquire the professional skills and techniques which are essential to practice, and a grasp of the ethos of the profession, he must also cultivate a critical approach to existing law, an appreciation of its social consequences, and an interest in, and positive attitude to appropriate development and change. To achieve these aims, a combination of education at university level and apprenticeship in its widest sense is necessary."[23] This quotation from the Report of the Committee on Legal Education sums up neatly and comprehensively the requisites of a professional lawyer. The University cannot be expected to turn out graduates in law fulfilling all these. Therefore it is for the University to concentrate on the inculcation of law and its principles, the instruction of handling of facts and of the application of the law to facts, the cultivation of a critical attitude to existing law, and an appreciation of law in the context of the society. If all these can be achieved in the four years of undergraduate study the University would have more than discharged its burden. It is futile to attempt to include in the undergraduate curriculum more and more so called "practical" subjects in the hope that this would result an instant able practitioner. Such an attempt to be comprehensive would result in the mere teaching of rules without understanding, and superficiality. The emphasis in the University curriculum should be on the acquisition of basic knowledge and understanding of the law and where to find it.

THE POSTGRADUATE PROFESSIONAL TRAINING

It is heartening to note that the legal profession in Singapore has since 1975 accepted that it owes some responsibility for the training of its new recruits. However the postgraduate practical course can be further improved. The obstacles to improvement hitherto have been finance and personnel. To the extent that the Law Society is willing now to contribute some funds to the Board of Legal Education one of the obstacles to having a fulltime Director is removed. It now remains for the right person to be found. Ideally the course should be taught during office hours and by a full-time professional Staff. Once this is possible, the course could then be lengthened and the unsatisfactory system of pupillage be replaced entirely. Such an ideal obviously re-

[23] Report of the Committee on Legal Education 1971, Cmnd 4595 at p. 42.

quires money and even if this is available there remains the problem of recruiting suitable personnel. So this remains a dream. Therefore for the immediate future the task is to find a suitable fulltime Director who would coordinate and supervise the teaching of the courses. So long as the system of pupillage remains necessary masters should be again reminded of their responsibilities and pupils in turn should be made more aware of their need still to learn.

CONTINUING LEGAL EDUCATION

With the increasing specialisation within each field of law there has been felt among some lawyers a corresponding need to learn about these new branches and developments. Besides, there are those lawyers who after some years in practice feel that they would like to acquire knowledge in a law subject which they did not have the opportunity of reading whilst at University.[24] To cater to this, the University LL.M. programme should be revised so that graduates in law could acquire the LL.M. degree through course work and examination. This, however, would require a more satisfactory and stable staffing position in the Faculty.

Apart from revising the LL.M. programme which would take some time to implement, the Law Society has in recent years conducted one day or one afternoon seminars on certain aspects of law. These I believe have been quite successful and should be continued.

It has also been suggested that the Law Faculty run week-end courses on new developments of the various branches of the law. Something in this line was conducted by the Law Faculty in September last year on certain aspects of transnational enterprise investment laws in Singapore. The problems of holding such seminars relate to costs involved for the funding of suitable speakers and participants and the hiring of premises.

[24] In recent years there has been an increasing number of young graduates who after some years in practice take leave to read for the LL.M. in London.

EDUCATION IN THE LAW: PHILIPPINE EXPERIENCE*

*Irene R. Cortés***

INTRODUCTION

It is a distinct honor and privilege for me to participate in the legal scholar program of the ASEAN Law Association and in this seminar on Legal Cooperation in ASEAN.

I am deeply grateful to the National Committee of Indonesia, the Philippine National Committee and the ASEAN Law Association for this invitation to visit Indonesia and to the National Law Development Center for hosting the visit. The royal treatment Mr. Radhie and his associates have extended makes this an unforgettable experience. It is indeed a rare opportunity to see historic and renowned places in this country, meet old friends, make new ones and above all to exchange ideas, experiences and insights on the subject of education in the law.

The invitation extended to me suggested that I speak on legal education. I happily accepted since I belong to that all too small sector of the legal profession that has made law teaching a career. It is a sector that does not figure too prominently in the legal firmament. As Bernard Shaw has wittily observed: "Those who can do; those who can't teach" and our revered Justice J.B.L. Reyes in further elaboration has quipped: "Those who can't teach, become law deans."

Being a law teacher and having been law dean, I wonder to what new category I belong. I mention these bits by way of presenting my credentials for views which I propose to air regarding education in law in the Philippines and to attempt as Mr. Radhie has suggested to relate the subject to Legal Cooperation in ASEAN.

The ALA Conference in 1979 held here in Jakarta as well as the one in 1980 in Manila focused on legal education in general and on aspects of clinical legal education and continuing legal education. From a reading of the papers my compatriots presented here, the set of papers written for the Manila Conference and the proceedings in Workshop II, it can said that legal education in Indonesia and in the Philippines has

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*Presented before the Seminar on Legal Cooperation in ASEAN on August 9, 1982 at Jakarta, Indonesia, sponsored by the National Law Development Centre, Ministry of Justice, Indonesia.

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common features as well as differences. This visiting legal scholars program which has been inaugurated among the ASEAN countries can be a rich source of mutual exchange and benefit. Forums like this could contribute to a sustained effort to develop and improve legal education without which any reform in law may be elusive or at best ephemeral, any legal cooperation may well rest on shifting sand.

Legal education is the fountainhead of the legal profession. The quality of the training it gives, largely determines the quality of the service lawyers render and the justice the courts dispense. It is fitting for the ALA to address itself to legal education on a continuing basis by scheduling in the forthcoming 1982 conference another workshop on legal education and putting in operation this program in which I have the pleasure to participate.

LEGAL EDUCATION IN THE PHILIPPINES

In the Philippines the world's three major legal systems meet: Roman Civil Law and Canon Law of the Catholic Church introduced through Spain, English Common Law through the United States and Islamic Law from your part of the world. These displaced customary law but failed to obliterate it fully. In this age of self-determination, it is the function of legal education to continuously assess the impact of these different systems in the light of our people's needs and aspirations.

In the country today, there are 45 law schools more than 35% of them located in Metro Manila. Until a few years ago only the College of Law of the University of the Philippines was supported by the State. Lately, two more have been opened, one in the Mindanao State University and one in the Don Mariano Marcos University in La Union. The first law courses in the country were offered in 1734 in the Pontifical University of Santo Tomas. Spanish was the language of instruction and the curriculum, while mainly devoted to various branches of the civil law as well as studies in economy, statistics and finance.

The first law courses conducted in English began in the Manila YMCA in 1910. This was the forerunner of what is now the College of Law of the University of the Philippines which was formally established in 1911. Its operation was suspended during the Japanese military occupation, and resumed after liberation. I have been a full-time member of the law faculty of this law school for more than 25 years.

Legal education is a term of art. It is used here to refer to the formal training which goes into the making of a lawyer.

Briefly, in the Philippines this training involves the completion of a four-year baccalaureate program in the arts or sciences before admission

to the four-year law course leading to the Bachelor of Laws degree. Admission to the bar is governed by the Rules of Court. It requires satisfaction of academic requirements, and passing the bar examinations given by a Committee of the Supreme Court. Of the manifold problems of legal education in the Philippines, about the most central is the dominance of the bar examinations. As a consequence of detailed Supreme Court rules on the preparatory law course, the subjects which should form part of the curriculum and the nature of the bar examinations, the training that law schools in the country give to the students is preponderantly bar-oriented.

The avowed goals of law schools to prepare students for the practice of law, to assume leadership in different spheres of public service, to contribute to the development of Philippine jurisprudence, etc. assume secondary importance, the consuming objective being to prepare students to pass the bar examinations. How largely these examinations loom in the Philippine legal subculture is shown by the recent bar incident of unhappy memory which undermined the prestige of the Supreme Court. At this time there still remain some knots to untangle.

In the meanwhile there are stirrings that are beginning among members of the academe concerning legal education. The past few years have seen a revitalization of the Philippine Association of Law Schools (PALS) composed of law deans and the formation of a Philippine Association of Law Professors (PALP). In the process, legal education has received more critical attention. Conferences and seminars have reviewed and reevaluated the law curriculum, inquired into methods of instruction and explored the possibilities of clinical education.

The idea of a core-elective curriculum was suggested a decade ago for law schools to consider. One obstacle, virtually insuperable for private law schools, is the supervisory power which the Ministry of Education and Culture exercises over them. The courses to be offered, the credit hours, even their sequence must first be approved by the Ministry before any private law school can institute curricular changes. This is aggravated by the Supreme Court Rules which impose requirements going back to secondary school education, pre-law courses and also prescribe subjects that should be in the law curriculum as condition for taking the bar examinations. These place the private law schools in a virtual strait-jacket.

This year, after much debate and discussion, the U.P. Law faculty revised its curriculum introducing the core-elective concept, which in reality is nothing new. In every other unit of the University, students are required to take basic courses and are left to choose or elect a substantial number of courses in areas of their interest. Whereas the old law

curriculum provided for only two electives, the new one gives the student the freedom to choose up to about 20% of the courses for the Ll. B. degree. The revision process is not complete. The curricular plan has to be put in final form and put through the various stages required by the University for the adoption, amendment or revision of curricula. But the critical first step has been taken. Not only are students to be given more participation in fashioning their legal training, but the curriculum is also being enriched with provision for more courses in jurisprudence and the opening of interdisciplinary electives.

The bar examination system itself has been the subject of sharp scrutiny. I had occasion to study this aspect in depth in 1978 and a succession of bar examiners since then have informed me that the study was "required reading" for them. There remains much room for improvement in the bar examinations.

TEACHING METHODS

There are various teaching methods employed, the clinical method being one of them. Law teachers use the case method, a combination of lecture/recitation, the problem method or seminar depending on the subject, the school, the students and the teachers' personal style.

The approach to fields of law derived from the civil law system and those introduced from common law may differ. In the first the law is codified and the starting point of study is the codes. Common law borrowings require case study, i.e., the analysis of Supreme Court decisions using the "modified Socratic method" following that made famous by Harvard's Langdell. For the U.P. College of Law students case-study is *de rigueur.* Students of private law schools rely more on textbooks and lectures.

Philippine law schools largely follow the American law school model. English is the medium of instruction. Class attendance is compulsory, the case method is used, co-curricular activities like the law review (now student-run in the U.P.) and moot court competitions are undertaken and innovations such as clinical legal program are beginning to form part of the law curriculum. More than 15 years ago the U.P. College of Law introduced a continuing legal education program for judges and practicing lawyers. The U.P. Law Center was later established within the College to carry on and expand the program. At least one private law school has likewise offered a continuing legal education program.

EFFORTS TOWARDS REVIEW

In the process of reviewing existing institutions and practices, a blanket rejection of ideas and methods of foreign derivation is not suggested.

But what may work well in the West may not necessarily be desirable in our part of the world. A good idea is worth serious consideration, but an attempt to transplant institutions, practices, or laws does not always work because the environment to which they will be transplanted needs to be taken into account; adaptation being more desirable than simple transplantation. Thus we borrow and modify and perhaps improve on foreign models to suit our own needs. From the bowing acquaintance I have made with what is being done in Indonesia, my impression is that in the field of legal education Indonesia is ahead of the Philippines in at least two respects: (1) the use of Bahasa Indonesia as official language and as medium of instruction; and (2) the efforts towards the enshrinement of customary law as part of the legal system.

The Philippines has yet to fully develop Filipino as national language for use in schools and in the courts. The use of borrowed language poses serious problems. Law has a language of its own, alien even to those who speak the same tongue. When law is written and taught in a foreign language it becomes more esoteric, its concepts more difficult to assimilate and retain. If it is difficult for those who undergo the professional training for lawyers, it would be even more unintelligible for the ordinary citizen. There are those of us in the Philippines who have begun to give serious thought to using our own language in legal education. The need for this is even more urgent in the courts now clogged with unresolved disputes. One of the factors for delay is most certainly the language problem since in court proceedings multiple-level interpretation would be required when witnesses, counsel and judge do not share the same language.

The people of pre-colonial Philippines had their own custom law which the colonial governments ignored when they imposed their legal institutions. But four centuries of colonialism have failed to completely eradicate custom law and anthropological studies show that they persist as effective norms among a substantial number of Filipinos. Efforts are now being exerted to identify these in the process of research and law development with a view to making them a formal part of the legal system. The Muslim Code of Personal Laws is one result of this effort. Among members of the academe, law teachers of the U.P. are in the forefront of this undertaking.

The Indonesian National Law Development Center has an impressive record of projects along these lines, with territorial scope and subject matter of operations many times more extensive than those of the Philippines.

The legal systems and legal education in four countries of the ALA appear to still have symptoms of a colonial hangover. The continuation of relations, including the extension of assistance, especially cultural,

works to perpetuate the relationship of dominance and dependence. Positive efforts will have to be exerted to establish authentic local legal institutions.

EDUCATION IN THE LAW

The title I have chosen for this unstructured piece is education in the law – not legal education. This has been deliberate. From the very start I had every intention of referring to developments which though not legal education in the strict sense, relate to education in the law.

First, there are regular in-service training programs in various branches of the government service where special aspects of the law are discussed. These include seminars conducted for civil service employees on the law and regulations governing government employment, those given by the Ministry of Labor on the laws it administers and implements, those on public prosecutors, on agrarian reform, police officers, etc.

Second, "popularizing the law" projects are also being undertaken. These are intended for the ordinary citizens, people in the grassroots and, recently, for elementary and secondary school children. The idea is to acquaint the participants with the basic rights and obligations of citizens. This has been variously referred to as programs in legal literacy, street law or practical law. The U.P. Law Center embarked on this a few years ago at the request of members of women's organization, largely coming from the rural areas and the peasantry. They wanted instruction, in a language they could understand, on basic law. A pilot training program was organized for three successive years. Having found it feasible, the Law Center expanded and modified it through Barangay Legal Education Seminars (BLES) in many parts of the country. But unlike the pilot workshops, the BLES is compressed over the weekend. The former were live-in programs which lasted for at least a couple of weeks. The teaching of practical law to school children started a few months ago on an experimental basis at the U.P. Integrated School.

Law is an all-pervasive element of a people's culture. It touches every aspect of their lives, reaching out to the unborn child and beyond the grave. Though every person is presumed to know the law, not even the most erudite lawyer or judge can know all the law there is, much less the ordinary layman to whom even the rudiments may be a mystery. But the maintenance of the social order requires respect and observance of law. These are more easily obtained if those on whom they are imposed are informed about them and can appreciate the basis for their compliance. The law provides protection, but unless the citizens know to what they are entitled they cannot avail of them, hence would be no better off than if there were no provision for such protection. Popular

awareness of the law and the role it plays in society and individual lives must be vital parts of education.

Soon after the Integrated Bar of the Philippines was established, I advanced the view that the IBP has a role to play in legal education on three levels, namely, (1) legal education of the people, (2) legal education as professional training, and (3) continuing legal education. But it can do much more. I had the privilege of chairing the IBP Standing Committee on Legal Education and Bar Admissions when it formulated an instrument for law school accreditation in cooperation with other organizations. This is particularly necessary because of the uneven standards prevailing in our law schools. Acceptance of the accreditation idea has been exceedingly slow, but in a handful of law schools accreditation has taken place. There is need for *imprimatur* by the Supreme Court or positive action by the IBP to make it generally effective. But the Court has yet to act on vital matters submitted by the IBP. The Grievance Procedures, Law School Accreditation, the proposed Code of Professional Responsibility await its action.

THE LAW TEACHER

In this visiting legal scholars program, it is appropriate to make a few observations on the teaching arm of the legal profession which generates the substantial part of legal scholarship.

In the Philippines, as a rule, law teaching is a secondary activity, done after a full day's work by law practitioners or judges or other government functionaries. The lawyer who devotes a professional career to law-teaching belongs to a very small group, mostly in the U.P. College of Law. Even there, the problem of recruitment and retention of full-time faculty is becoming acute.

This vital role of the teaching arm of the law profession has yet to be fully appreciated. It is an extremely rare case for a lawyer to plan a professional career in law teaching. This is not surprising, for as a well-known figure in the U.P. once said, a person who embraces teaching as a career takes the vow of poverty. Among members of the law profession there is no disputing the fact that measured in terms of material returns the law teacher is way down the income bracket. Fortunately there are still a few who willingly take it up for the invisible returns not measurable in dollars or pesos. In carrying out the responsibility for training future lawyers, there is the satisfaction of transmitting the traditions and principles of the law, the ideals of the legal profession and of seeing students develop intellectually and morally. But the law teacher's functions are not fully discharged merely by holding class sessions, training, giving examinations and rating students. The law teachers to be

effective must endeavor for deeper understanding of the law, through research and reflection. Through critical study, they also identify emerging trends and areas for reform and contribute towards making law an instrument of social development. I am one of those who hold the view that law teachers must principally assume the critical and predictive functions in the legal profession. The opportunity to contribute to the growth of law and jurisprudence is added reward.

Also, for good or ill, the law teacher is the first model the law students see of what a member of the legal profession ought to be. They therefore bear the heavy responsibility of setting the example of moral rectitude.

In the Philippines today, there are indications that the law teachers will soon come into their own and long years of neglect are about to be rectified. Lately, more positive steps have been taken by the University, the law alumni as well as the government to provide incentives for full-time law teachers. Some of these efforts will ultimately have something to do with Legal Cooperation in the ASEAN.

U.P. LAW COMPLEX

Last year soon after the incumbent ALA president, Edgardo J. Angara, an alumnus of the U.P. College of Law, became president of the University of the Philippines System, the concept of a U.P. Law Complex was presented to him. When originally thought of some 10 years ago, this called for no more than an integration and expansion of the College and Law Center facilities with the addition of dormitories for law students. Much of the U.P. Law Complex idea is still in the blueprint stage, but some progress has been made to make it a reality. President Marcos, a U.P. Law alumnus, has given his support and authorized the establishment of a Legal Research Fund to be built up partly from government appropriation augmenting contributions from alumni and friends of the College. 1983 being the diamond jubilee of the University, things can be expected to go at an accelerated pace. The Board of Regents of the University has approved in principle the creation of a U.P. Law Complex.

The concept is one that would create an integrated system of national and regional legal institutions dedicated to teaching, research, training, information and other related services. Its establishment is a response to the growing legal and law-related needs of Filipinos, the Republic of the Philippines and the region, especially the ASEAN community.

"The main thrusts of the U.P. Law Complex are:

1. To maintain/enhance in the College of Law the tradition of aca-

demic excellence and its leadership in legal education;

2. To reinforce/expand the legal extension services of the Law Center for policy/lawmakers, lawyers, and the community;

3. To transform the Law Library into a Legal Resources Center which will collect, analyze, index, computerize and actively make available law and law-related information for national, regional and international publics;

4. To establish an Academy of ASEAN Law and Jurisprudence where studies on comparative ASEAN law, regional development law, dispute settlement and other crucial aspects of law in the ASEAN Region would be conducted;

5. To create an International Studies Institute of the Philippines;

6. To institute an Academy for the Administration of Justice with a Model Court."

It will thus build up on what already exists, integrate activities and make them more efficient. It will also create new units and introduce modern technology in information storage and retrieval.

The physical facilities will be expanded. The first one built is a five-storey library building which should be ready for occupancy quite soon. The site for other constructions has been cleared. Whether and when the additional structures will be put up will depend on the availability of funds.

As earlier mentioned, the first step has been taken to revise the undergraduate law curriculum. On the graduate level there is a parallel effort to improve the curriculum and solve the faculty problem. It is envisioned that as the Law Complex becomes operational, graduate legal education will likewise benefit from comparative law studies and researches which are planned in the Academy of ASEAN Law and Jurisprudence and the International Studies Institute of the Philippines (ISIP). These then are the latest in Philippine legal education.

CONCLUSION

As the members of ALA continue to meet and acquaint each other with developments taking place in their respective countries, it is possible that a plan for legal cooperation may be evolved so that each can emphasize areas where the strength of its legal education lies and share with other members its acquired expertise through exchange of visiting scholars or students. The adoption of uniform laws in specific areas will take longer but can only begin if we in the ASEAN become familiar with features of law shared in common. This can begin in no better place than in the law schools.

LAW AND LEGAL PROFESSION IN INDONESIA*

*Harjono Tjitrosubono***

DIFFERENT LEGAL SYSTEMS FOR DIFFERENT GROUPS OF PEOPLE

To understand the characteristics of the legal profession in Indonesia we must have an understanding of the law and the legal system which, in Indonesia, is a dualistic system as we will explain later, because the legal profession is a tool to implement the law and a tool for the development of law

Law comes into existence, becomes valid or loses its validity, and changes and develops, according to the ways and legal proceedings (either written or unwritten, formal or not formal) inherent in the legal system.

The process of change or growth of law from a simple system of rules of life in a traditional society to a complexity of rules of life in an increasingly modern or developing society, necessarily has to create different and complex rules of law to meet the restlessly growing and changing demands of life. This, in turn, has to bring with it the consequence of different and more specialized legal professions, reflecting the many, various social aspects of life.

The history of Indonesian law shows the positive influence of Muslim law. Since the thirteenth century when the Muslim religion was brought over to Indonesia, a process of penetration of Muslim law into the Indonesian family law has taken place and has resulted in an assimilation, in part, of the Muslim family law into our Indonesia law, or "*adat* law", or Indonesian custom law. Practically all of the Indonesian people can be said have become Muslims, and because of the Indonesian flexibility and tolerance, the Muslim rules of life are accepted and exist side-by-side with the living traditional rules of life. In the long cultural process of Muslim influence since the thirteenth century, the Muslim rules for marriage and divorce have been absorbed and assimilated in the Indonesian *adat* law.

During colonization by the Dutch a concordant Dutch law was introduced, which is known until now as the Western Civil Law. This western law, based upon the Roman Continental system, is declared by law to be valid for people other than Indonesians; these are the Europeans, or people from countries with western culture, the Japanese, the Chinese and people from Eastern countries, like the Arabs.

In general, the *adat* law does not develop fast enough in accordance with the trend of development of society so that in modern transactions Indonesians have to adopt western civil law, like the law of contract, commercial law etc., although even western law is now too far behind and out of date because it has not been changed or revised since 1847.

The Indonesian government has made many efforts and has appointed State commissions to revise and renew the western civil law and to codify the *adat* law so that we may have a national civil law under one legal system, but it will take a long time before such a job can be fulfilled.

In the meantime, we are working on revising certain important parts of western civil law. There is urgent need for new rules in many kinds of business transactions in the field of national and international trade and foreign investment as a consequence of the economical development. There also exists the need for quick and just settlement of legal disputes. In view of such an urgent need special parts of the civil code as corporation law in particular, commercial law in general and the law of civil legal proceedings have our first attention. A study of these laws is being made and drafts are being prepared by the Department for the Development of a National Law called the *Badan Pembinaan Hukum Nasional* of the Ministry of Justice.

Our Criminal Law also is based upon western law introduced by the Dutch in January 1918, of which some articles have the special intent to protect the colonial state of affairs which should be now withdrawn from the criminal code. It is a *communis opinio doctorum* among Indonesian lawyers that this western oriented criminal law with a colonial outlook, which is valid until now, has to be renewed and replaced by another new national penal code.

The new code must be released and cleaned of the colonial principles included in the articles of the Dutch-oriented Penal Code concerning crimes against the State, crimes against the Public Order, crimes against the Head of the State. It must be consistent with the fundamental principles of the Indonesian State as a democratic republican State and as a Law-State based upon the Indonesian Constitution. i.e. the *Undang-Undang Dasar* 1945 and the "Five Pillars of the Indonesian State Philosophy" known as the *Panca Sila*, in which the fundamental human rights are recognized as Constitutional rights of the Indonesian citizen.

DIFFERENT COURTS AND OTHER LEGAL INSTITUTIONS FOR LAW ENFORCEMENT

As a consequence of the assimilation of Muslim law in our *adat* law, we have a special Muslim religious court for marriage and divorce cases. One will wonder why these cases should not be judged by the traditional *adat* courts. This is so, because anyhow the Muslim law valid for these cases has already become part of the *adat* law; so that Muslim law is nothing else but *adat* law which should be judged by the *adat* court.

The question is that although these Muslim rules have become *adat* law, they are and remain Muslim law with a religious background of Muslim culture and religious values. Considered thus, such cases are better entrusted to Muslim experts as judges, because they know best about Muslim culture. This justifies the existence of a special Muslim religious court.

Adat law disputes between Indonesians, in the past belonged to the special jurisdiction of the traditional *adat* courts, while (western) civil law disputes between persons subject to the (western) civil law, (Indonesians taking part in modern transaction outside the *adat* sphere) belonged to the jurisdiction of the (general) civil courts.

At present, the *adat* court's and civil court's administration and organization have been unified so that there is only a (general) civil-court for all the groups of people for all legal disputes based upon *adat* law or western civil law. However the Muslim religious courts for marriage and divorce cases have to be maintained and continued, because it would be impossible for the civil court to handle legal matters in which religious rules are involved. Besides, it would be more in accordance with the religious feeling of the Muslim people to leave those religious matters to a special Muslim religious court.

ENFORCEMENT OF CRIMINAL LAW

The prevention and repression of crime is the specific task of the police.

In the prosecution of a criminal, according to criminal legal proceedings, the police have to make the preliminary investigation an examination of the accused with the right, based upon proper evidence, to put the accused in preliminary detention for a maximum of 20 days. Exceeding the period of 20 days the police must have approval from the prosecutor, who can give an extension until 30 days, and thereafter the approval from the judge will be necessary.

The police officer makes a report of the result of his investigation with a conclusion of his legal opinion about the law violated by the

accused, which report must be sent to the prosecutor, with which the job of the police is finished.

The prosecutor will then take care of the prosecution of the accused and will act as public prosecutor in court, that is the civil criminal court. The prosecutor can also do all the investigations and examination of the accused himself, with or without the assistance of the police.

The law of criminal legal proceedings, introduced in 1848 is already out of date and needs to be reviewed and replaced by a modern law of criminal legal proceedings which will give better protection of the fundamental human rights and the rights of the accused, and a stronger position for the defence lawyer. A draft has already been prepared by the earlier mentioned *Badan Pembinaan Hukum Nasional*, a department of the Ministry of Justice, and is waiting to become the new law after it has passed parliament and obtained Presidential approval.

THE MILITARY COURTS AND MILITARY INSTITUTIONS FOR LAW ENFORCEMENT

The direct military involvement in the upholding of law and order and in the administraiton of special justice for the military has given rise to the need for legal education and legal professionals among the military themselves. In this connection it may be useful for a better understanding, to give a brief introduction of the Military Court of Justice as one among the four branches of the judicature, for such a system does not always exist in other countries.

In the Ministry of Defence and Security there is *Badan Pembina Hukum Angkatan Bersenjata Indonesia,* abbreviated into *babinkum ABRI, i.e.* Legal Department of the Ministry of Defence and Security, comparable to the Office of the Judge Advocate General in some countries, as a central executive unit at department level, with the main duty to assist the Minister of Defence and Security in formulating and preparing general/main policies in the legal sphere, particularly military jurisprudence, covering activities in the spheres of legislation, courts martial, the prosecution in the courts martial, legal aid/counsel, and legal education.

Among others, therefore, it covers Institutions pertaining to Courts Martial and Institutions pertaining to Prosecution at Courts Martial, which are permanent judicial institutions here in Indonesia.

THE COURTS MARTIAL AND THE PROSECUTION OFFICES

There are twenty-two Courts Martial throughout Indonesia as first-instance courts for any member of the armed forces, from private up to

captain charged with all degrees of criminal offences. Side by side with these courts are twenty-two main prosecution offices.

The first-instance courts for officers from major through generals, are the High Courts Martial, seven in all, which also act as courts of appeal (second instance) upon the decisions of the lower Courts Martial. Accordingly, there are seven High Prosecution Offices.

The Supreme Court, the highest court for the four branches of the judicature (general courts of justice, religious courts of justice, military courts of justice, and the government administrative courts of justice) acts as court of appeal upon the decisions of the High Courts Martial and as court of cassation (third instance), while the Attorney General's Office is the highest institution of the prosecution offices.

In addition, there are two provisional courts martial: The Extraordinary Court Martial trying specific cases assigned by the President of the Republic of Indonesia, and the Court Martial in the Field trying cases of crimes and offences committed by persons who are subject to military jurisprudence in the field/in the state of war.

LEGAL ADVISERS

Besides the judges and prosecutors in these institutions, and staff officers in *Babinkum* and other offices, there are also military lawyers who act as legal advisers to certain level Commanders, not to mention the many clerks in courts martial and, few defence counsels.

Government appointed advocates (legal advisers/defence counsels) are usually experienced and excellently qualified civilian lawyers from *Peradin (Persatuan Advocat Indonesia*, i.e. The Indonesian Advocates Assocation*)* or from L.B.H. (*Lembaga Bantuan Hukum*, i.e. Legal Aid Institution).

THE SOURCES OF THE MILITARY LAWYERS

Military lawyers are either reserve officers (who then become regular officers) with master degrees, graduated mostly from government law faculties, or regular officers graduated from the Military Law Academy, A.H.M. (*Akademi Hukum Militer*), and they are from the Army, Navy, Air Force, and the Police Force.

KOPKAMTIB AND OPSTIB

a. *Kopkamtib* is the abbreviation of *Komando Operasi Pemulihan Keamanan dan Ketertiban*, i.e. the Operational Command for the Restoration of Security and Order.

Established in October 1965, just a few days after the Indonesian Communist Party (PKI) launched its abortive *coup d'etat* attempt, originally the mission of *Kopkamtib* was to restore security and order resulting from the instability and disorder situation created by the *coup* attempt.

Its existence was formerly based on Presidential Decisions, later strengthened by the Decisions of the People's Congress Number X MPR/1973, and the most recent Decisions Number VIII MPR/1978, by which the Congress "gives power to the President/Mandatory of the People's Congress, to take necessary steps in order to safeguard and maintain the unity and integrity of the Nation and to prevent the reoccurence of the threat of the PKI/September 30th movment and other threats of subversion, in safeguarding National Development, the *Pancasila* and the 1945 Constitution".

In performing the power given by the People's Congress, the President has taken further steps by specifying the tasks of *Kopkamtib,* so that besides restoring security and order resulting from the communist party's *coup* attempt and to safeguard the preservation of Pancasila and the 1945 Constitution, it has also to surmount other extreme and subversive activities, to safeguard in an indirect manner all of the policies and programs of the Government, particularly the Five Year National Development Program, and the authority and integrity of the government from central to the regional administration level, and to handle in a specific manner the problems of security, as directed, if routine operations cannot cope with them.

b. *Opstib* stands for *operasi terbi. Operasi* means operation, and *tertib* is orderly, in good order, tidy, or well arranged. The English term often used here is graft operation or operation clean up. Started in June 1977, this operation is part of the activities of *Kopkamtib.*

For a long time there were, and in some cases still are, a lot of government officials collecting additional income, drawing profit or enriching themselves through many different kinds of illegal or unlawful ways and means, such as corruption, bribery, levies, blackmail, 'squeezing', collecting money from contractors, drivers, drawing 'wisdom' taxes, and many other ways.

Realizing those worsening incidents, the Commander of the Kopkamtib decided to take actions through *opstib.* The negative effects of such illegal practices are clear. The positive effects of the actions taken by *opstib* are felt. Everybody knows that to cure such a chronic condition is not an easy task and cannot be accomplished in a short time and that actions should be taken continuously and laboriously.

In this 'graft operation' or 'operation clean up' the participation and the role of the lawyers and other law enforcers, either civilian or from the armed forces, are enormous, indeed. We are in agreement of continually fighting these misdeeds, and new ideas of improving or creating more effective methods will always be forwarded.

THE LEGAL PROFESSION AND THE ASSOCIATION OF LAWYERS

The legal profession in a developing society is the most concerned with the implementation of law and law reform especially concerning the gaps and disharmony of the existing law in conflict or not in compliance with the social reality as a consequence of the new demands of the development society.

The existing law must not be seen merely "in its factual appearance" *(dass Sein),* as valid for here and now, but it must look forward in order to observe and recognize the trend of the legal development, that must be taken into consideration in the legal concept in order to reform, review, refine, or renew the existing law in response to the social, economical, and political development.

The social process of development will on the other hand always influence the birth of new values in the law "that should be" *(dass Sollen)* in the legal consciousness of the people. These values have to be realized in new rules of law.

The legal profession as a tool of legal development cannot be practised on the basis of a mere realistic or pragmatic approach towards the problems of law and justice. It must be fulfilled with an ethical approach to realize the fundamental values of law, social justice and humanity in order to establish a better world and happier mankind.

Without such an aim the legal profession will be a dull, colourless profession of mere legal technicians without the idealism that has designed the history of man in his search for the highest truth and real justice under the device *"Fiat Justitia Ruat Coelum".*

This aim of the legal profession is reflected in the constitutions of the associations of the Indonesian lawyers like the General Association of Lawyers, called the PERSAHI, of which the members are all lawyers in different field of legal profession, the Association of Judges, called the IKAHI, of which the members are all judges from the Lower Court, the Court of Appeal and the Supreme Court, the Association of Prosecution Officers, called the PERSAJA, of which the members are all the prosecution officers of the Local Attorney's Office, the Higher Attorney's Office and the Attorney General's Office, the Association of Practicing Lawyers, called the PERADIN, of which the members are all practising lawyers who have an official licence from the Department of

Justice, and the Association of Notaries called the INI, of which the members are notaries appointed by the Department of Justice.

For better and closer cooperation these associations are coordinated in a secretarial body called the MAHINDO, governed by a Joint Executive Board consisting of all the chairmen of the member associations. The legal profession is thus more than just drafting contracts for all kinds of transactions, giving legal counsel and advice, and acting as a proxy in or outside court, which are indeed the daily routine work of a practising lawyer, but above all it is the mission of a lawyer to act as an agent of legal development.

The legal profession of the judge is of special importance, because of his function in our legal system as a source of law. This doctrine of the source of law was introduced by Dutch jurisprudence through Western legal education together with the introduction of Western law. This doctrine is now accepted in the Indonesian legal system, and implemented in accordance with our Indonesian concept of law.

We recognize as sources of law:

1. The *Panca Sila,* "The Five Pillars", laid down in the Preamble of the Indonesian Constitution, prescribes the Five Fundamental Norms of Law, Ethic and Politics *viz:*

- Belief in God;
- The Unity of the Nation;
- Democracy, by Representatives of the People, based upon Consensus, which is lead by Wisdom;
- Humanity; and
- Social Justice.

One of the founders of the *Panca Sila* the former President Soekarno declared the *Panca Sila* as a State philosophy.

The former Vice President Hatta, also as one of the founders, is of the opinion that the *Panca Sila* are concrete fundamental directives of Ethic and Law that must be realized in concrete rules of law and in State-politics.

In State politics and in social life the *Panca Sila* is accepted as a State philosophy as well as a prescription of the fundamental norms of Ethic and Law. In this view the *Panca Sila* is in its nature the philosophical, ethical and legal underlying ground of the Constitution, and in that sense the *Panca Sila* must be considered as a source of law.

2. The Constitution, viz. the *Undang-Undang Dasar* of 1945.

3. Legislation.

4. Customary law, or the *adat* law.

5. Jurisprudence.

6. The Judge, in constant Court Decisions in relevant, similar cases.

The function of the judge as a source of law especially in *adat* law is an essential legal point of view. The operation of this function is based upon the theory of decision-making, called "the open system of law". According to this system the *adat* law judge through his decisions makes *adat* law, because he decides for certain cases whether customary rules of conduct will be declared as *adat* law, or whether rules of *adat* law will be declared valid, or not valid any more, or have to be reformed, or whether a new rule of *adat* law must be created.

This open system of law is not a special system of *adat* law decision-making but it is a general system of decision making followed by the judge in cases of civil law, not in cases of criminal law. In criminal law, the judge is absolutely bound to the formal wordings of the law and the authentic interpretation given by the legislator. In this open system the judge is, on the one hand bound by the existing rules of law, whether unwritten *adat* law or written positive law, while on the other, he is also free *(freiheit im gebundenheit)* to interprete existing rules of law in relation with the social reality, and to take into consideration the legal conscience of the people and the ethical values in the rules of life of the people in their social and human relations.

That means that he is free through his interpretations to refine or to extend the legal meaning and intention of the existing rules of law and by doing so the judge through his decisions in fact has made law, what is called "judge-made-law". This will be the case where the decision of the judge has wide-spread legal influence and is generally accepted to have a legal binding effect as a rule of law, which will appear in constant Court Decisions in relevant, similar cases. With this open system of law we have left the old dogmatic doctrine that the judge is a mere instrument or mouthpiece of the law, and instead another function is given to the judge to play an active role in law reform and law making as a tool of the development of law.

NOTES:

*Paper presented before the Conference on Legal Development in ASEAN Countries in Jakarta, February 5-10, 1979 under the auspices of the National Law Development Center, Ministry of Justice, Indonesia.

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THE LEGAL PROFESSION AND LAW IN MALAYSIA*

*Visu Sinnadurai***

INTRODUCTION

Though the Malaysian Legal System is very largely based on English law, unlike the position in England, the legal profession in Malaysia is a fused profession: a lawyer is both an Advocate and Solicitor. He may, therefore practise as an Advocate as well as a Solicitor. The legal training in both the Faculties of Law, at the University of Singapore and the University of Malaya, are geared toward such a direction so as to enable a law student to be equipped for both types of practice.

A person, though admitted as an Advocate and Solicitor of the High Court of Malaya, does not become a member of the Malayan Bar unless he has extracted a Practising Certificate from the Registrar, High Court. As at the date of this paper there are 1029 persons enrolled as Advocate and Solicitor in the Malayan Bar. This figure does not take into consideration other persons admitted as an Advocate and Solicitor or who are legally qualified, but who are not in practice. The Judicial and Legal Service has officers who are legally qualified. Others who are not included in the Malayan Bar list are those engaged as law teachers at the Universities or other institutions, legal officers in banks, private corporations and statutory bodies. The term 'legal profession' for the purposes of this Paper will be restricted to those who are governed by the Legal Profession Act of 1976 and who are members of the Malayan Bar. It is proposed to trace the legislative history of the legal profession to indicate the changes made over the years relating to the requirements for admission to the profession and to the various rules governing the conduct and practice of the profession.

HISTORY

As pointed out, the Legal Profession in Malaysia is presently governed by the Legal Profession Act of 1976. Provisions governing the legal

profession were first introduced in 1914 by the Advocates and Solicitors Enactment of the Federated Malay States (No. 22 of 1914). This Enactment was repealed in 1940 and subsequently the Advocates and Solicitors Enactment of 1940 was introduced (No. 1 of 1940). In 1947, the Advocates and Solicitors Ordinance was introduced and made applicable throughout the Malayan Union (No. 4 of 1947) and the Straits Settlement (Repealing the Advocates and Solicitors Ordinance of the Straits Settlement Cap. 62). Prior to 1914, power was given to the Judicial Commissioners under the Court Enactment (*Pahang* No. 18 of 1905) to make rules ... for regulating the admission of persons to be Advocates and Solicitors of the Supreme Court of the Federated Malay States, and suspending them from practice, or striking them off the Rolls' and also 'for fixing a table of fees and costs to be chargeable by Advocates and Solicitors for their services...' (Section 67).

As far as East Malaysia was concerned, prior to the introduction of the Legal Profession Act, Sabah was governed by the Advocates Ordinance of Sabah (Cap. 2), whilst Sarawak was governed by the Advocates Ordinance of Sarawak (Cap. 110).

ADMISSION OF PERSONS TO BE ADVOCATES AND SOLICITORS

(i) Under the Courts Enactment

Under the Rules made by the Courts Enactment, the following persons were qualified to be admitted and enrolled as an Advocate and Solicitor of the Supreme Court of the Federated Malay States: any person who is a member of the Bar of England or Ireland or who is a member of the Faculty of Advocates in Scotland or who may have been admitted as solicitor of the Supreme Court of Judicature in England and Ireland or been admitted writer of the Signet in Scotland or enrolled as law agent under the Law Agents (Scotland) Act 1873.

Such persons desirous of gaining admission had also to comply with certain other rules governing notices and residence.

(ii) Advocates and Solicitors Enactment (No. 22 of 1914)

The qualifications were similar to those under the Courts Enactment. However, the power to suspend and strike advocates and solicitors off the Rolls was now regulated by the new Enactment (Section 5, etc.).

(iii) Advocates and Solicitors Enactment 1940

This was the first comprehensive legislation to be passed to regulate the law with respect to Advocates and Solicitors.

Under this Enactment, a person is a 'qualified person' to be admitted

if he was a 'British subject or British-protected person who is a barrister-at-law of England or Northern Ireland or a member of the Faculty of Advocates in Scotland or a Solicitor of the Supreme Court of Judicature of England or Northern Ireland or Writer to the Signet or a Solicitor in Scotland.'

Further restrictions were also imposed: (a) that such persons must have 'attended and received instruction in law in the office in the Federated Malay States of active practitioner of not less than seven years standing in the Federated Malay States', for a particular period. The prescribed period was between six to twelve months. Power, however, was given to the Courts to shorten or dispense with this period of reading in Chambers to any applicant who 'has been engaged in any part of His Britanic Majesty's Dominion in the active practice...'

The Enactment, also provided that 'every person applying to be admitted and enrolled as an Advocate and Solicitor, shall... appear before three practitioners... who shall interview the petitioner and satisfy themselves and report to the Bar Committee whether in their opinion, the petitioner is by reason of inadequate knowledge of the practice and etiquette of the profession or of the English Language...' unsuitable for admission.

(iv) Under the 1947 Ordinance

The 1947 Ordinance, as originally introduced, restricted the class of persons who could gain admission to the same categories of persons as under the 1940 Enactment. Provisions were also made under Section 9 of the 1947 Ordinance for the admission and enrolment as Advocates and Solicitors, of persons other than the classes of persons mentioned aforesaid, who had entered into articles of clerkship of a period of five years with a practising lawyer of at least seven years practice. However, in 1961 when the Faculty of Law was established at the University of Malaya (as it was then called), the Ordinance was amended to allow law graduates from the University of Malaya to come within the definition of 'equalfied person' so as to enable such persons to be admitted to the Malayan Bar. In fact, by an earlier Amendment in 1951, persons who were Advocates and Solicitors of the then Colony of Singapore were also eligible for admission to the Malayan Bar. The 1947 Ordinance as originally enacted also provided, as did the 1940 Enactment, that such persons applying for admission had to attend an interview to satisfy the Bar Council that the petitioner possessed adequate knowledge of the practice and etiquette of the profession and of the English language. The other requirement of reading in chambers as a pupil under a practitioner of not less than seven years standing at the Bar was also retained.

The said period of reading in Chambers again varied from between six to twelve months.

In 1951, the Ordinance was amended and a further requirement was added: every petitioner had also to satisfy the Bar Council at the interview that he had adequate knowledge of the 'laws of the Federation'. In 1961, the Ordinance was amended to recognise a Certificate issued either by the Council of Legal Education of England or the University of Malaya to reduce the period of pupillage from twelve to six months.

The 1947 Ordinance was again amended in 1970 by inserting section 8A to provide for the admission and enrollment as Advocates and Solicitors foreign legal practitioners, namely Queen's Counsels who have, in the opinion of the Court, special qualifications or experience of a nature not available amongst local practitioners.

(v) Under Legal Profession Act

In 1976, an exhaustive piece of legislation, the Legal Profession Act, was introduced to replace the outdated 1947 Ordinance. This Act made a number of major changes to the earlier enactments.

By virtue of section 3 of the Act, the following persons were qualified to be admitted as Advocate and Solicitor of the High Court: (i) law graduates from the University of Malaya or Singapore; (ii) barristers-at-law of England or (iii) any other persons with the necessary qualification recognised by the Bar Council. In 1978 the Bar Council recognised law graduates of the following Australian and New Zealand Universities to be 'qualified persons' under the Act: (i) The University of Melbourne, Australia; (ii) Monash University, Australia; (iii) The University of Sydney, Australia; (iv) The University of Adelaide, Australia; (v) The Australian National University, Australia; (vi) Victoria University of Wellington, New Zealand; (vii) The University of Auckland, New Zealand; (viii) The University of Canterbury, New Zeland; and (ix) The University of Otago, New Zealand.

In 1978, the Act was amended by the Legal Profession (Amendment) Act 1978. Under this Act, the Attorney General was vested with extensive powers to issue a Special Certificate for admission as an Advocate and Solicitor, to any person who, in his opinion should be granted such a Certificate. Such a person may, however, be admitted only for a specified period. The effect of this was that any person who is legally qualified but not necessarily eligible for admission to the Malayan Bar may be granted such a Certificate. Such persons may be from any country or from any system of law applicable in the said country.

The Act also provides for a period of pupillage which must be complied with by applicants. As originally enacted, the stipulated period of

pupillage was twelve months. However, this period may be reduced to nine months if the said applicant has completed a course of instruction in the practical aspects of the law and if such course is recognised by the Bar Council. By virtue of section 13 of the Act, the Bar Council is given the discretion under certain circumstances to reduce this period of pupillage to 6 months. One such circumstance would be when the applicant has been in active practice in any part of the Commonwealth for a period of not less than six months or the applicant has been a pupil of a legal practitioner in any part of the Commonwealth.

The 1976 Act also makes a departure from the earlier legislation dealing with the legal profession on two main aspects: under the new Act, the interview or the *viva voce* which was required of all applicants has now been abolished. The other major change is that the Court may in its sole discretion admit to appear as Counsel any person who is a Queen's Counsel practising abroad, or any other person with special qualification or experience or any advocate and solicitor from Singapore with more than seven years standing. Such persons may only be appointed on an *ad hoc* basis. However, unlike the earlier legislation dealing with the same matter, there is no requirement under the new Act for such a person to satisfy the Court that he has special qualifications or experience of a nature not available amongst Advocates and Solicitors in Malaysia. The recent decision of the Federal Court in the case of *Louis Blom Cooper QC.* v. *Attorney-General Malaysia and Others* clearly illustrates the major difference between the two statutes dealing with this aspect.

OTHER REQUIREMENTS

Among the other requirements for admission to the Malayan Bar since 1970 is that only citizens of Malaysia or permanent residents of Malaysia may be admitted. All other persons as a general rule cannot be admitted. All other persons as a general rule cannot be admitted to the Bar.

MALAYSIAN BAR

Every Advocate and Solicitor becomes a member of the Malaysian Bar so long as he has a valid Practising Certificate. The Malaysian Bar is a body corporate with perpetual succession and a common seal and has the power to sue and be sued in its corporate name. Section 42 of the Legal Profession Act enumerates the purposes of the Malaysian Bar. Among its purposes are, *inter alia*: (a) to uphold the cause of justice without regard to its own interest or that of its members, uninfluenced by fear or favour; (b) to maintain and improve the standards of conduct and learning of the legal profession in Malaysia; (c) to facili-

tate the acquisition of legal knowledge by members of the legal profession and others; (d) to advise the Government and the Courts where necessary in matters affecting legislation and the administration and practice of the law in Malaysia; (e) to represent, protect and assist members of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia; (f) to establish libraries and to acquire or rent premises to house the libraries and officers of the Malaysian Bar or amenities for the use of members either alone or in conjunction with any other body or society; (g) to protect and assist the public in all matters touching, ancillary or incidental to the law; (h) to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors; (i) to award prizes and scholarships and to establish and subsidise lecturership in educational institutions in subjects of study relating to law; (j) to grant pecuniary or other assistance to any association, institute, board or society in Malaysia in the interest of the legal profession or of the law students; (k) to afford pecuniary and other assistance to members or former members of the Malaysian Bar and to the wives, widows, children and other dependents, whether of members, former members or decreased member who are in need of any such assistance; (l) to promote good relations and social intercourse amongst members and between members and other persons concerned in the administration of law and justice in Malaysia; (m) to encourage, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member thereof, and (n) to establish a Compensation Fund.

For the proper management of the affairs of the Malaysian Bar, the Act also establishes a Council, known as the Bar Council. Specific powers of the Bar Council are provided for under section 57 of the said Act: (a) to make rules to provide for all matters not expressly reserved to the Malaysian Bar in general meeting whether the same be expressed amongst its powers or not; (b) to answer questions affecting the practice and etiquette of the profession and the conduct of members; (c) to take cognisance of anything affecting the Malaysian Bar or the professional conduct of its members and to bring before any general meeting of the Malaysian Bar any matter which it considers material to the Malaysian Bar or to the interests of the profession and to make any recommendations and take any action as it considers fit in relation thereto; (d) to examine and if it considers fit to report upon current or proposed legislation and any other legal matters; (e) to represent members of the Malaysian Bar or any section thereof or any parti-

cular member in any matter which may be necessary or expedient; (f) with the prior approval of the Malaysian Bar in general meeting to award prizes and scholarships for students of law and to lay down the conditions for their award; (g) to appoint a Secretary of the Malaysian Bar and at its discretion any other officers, clerks, agents and servants for permanent, temporary or special services as it may from time to time consider fair and reasonable and to determine their duties and terms of service; (h) to purchase, rent or otherwise acquire and furnish suitable premises for the use of the Malaysian Bar; (i) to communicate from time to time with other similar bodies and with members of the profession in other places for the purpose of obtaining and communicating information on all matters likely to be beneficial or of interest to members; (j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar and to compound and allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Malaysian Bar; (k) to invest and deal with any moneys of the Malaysian Bar from time to time in securities authorised for the investment of trust funds by any written law; (i) from time to time to borrow or raise money by bank overdraft or otherwise by the issue of debenture or any other securities founded or based upon all or any of the property and rights of the Malaysian Bar or without any such security and upon such terms as to priority or otherwise as the Bar Council shall consider fit; and (m) to exercise all such powers, privileges and discretions as are not by this Act expressly and exclusively required to be exercised by the members of the Malaysian Bar in general meeting.

As originally enacted, the Legal Profession Act did not place any restrictions on Advocates and Solicitors desirous of being elected as members of the Bar Council. However, by an Amendment introduced by the Government in early 1978, the Legal Profession (Amendment) Act, A419, certain persons were disqualified from being members of the Bar Council: (a) any Advocate and Solicitor of less than seven years standing; (b) members of either Houses of Parliament or State Legislative Assembly; (c) those who hold office in any trade union or any political party or any other organization declared by the Attorney-General to be one which can be construed as being political in nature.

PROFESSIONAL PRACTICE, ETIQUETTE AND CONDUCT OF ADVOCATES AND SOLICITORS

The Legal Profession Act empowers the Bar Council to make rules for regulating the professional practice, etiquette, conduct and disci-

pline of Advocates and Solicitors. Among the etiquette rules which are in force are the following:

a) advertising; b) touting; c) fees; and, d) housing development.

a) Advertising

The general rule governing advertising is that an advocate shall not solicit or advertise, either directly or indirectly whether by circular, advertisements, tout, personal communication, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or procuring his photograph to be published in connection with cases in which he has been engaged or concerned (Rule 46 of the *Proposed Rules of Etiquette*). Rules are also in existence as to the size of signboard or nameplate. By a recent ruling of the Bar Council, Advocates and Solicitors may indicate in their calling cards that they are Advocates and Solicitors. It also permits the names and addresses of the law firms to be inserted in the Yellow Pages of the Telephone Directory.

b) Touting

'An Advocate and Solicitor shall not do or cause or allow to be done, anything for the purpose of touting directly or indirectly or which is calculated to suggest that it is done for that purpose.' (Rule 52).

c) Fees

An advocate and solicitor cannot charge his client contingency fees nor shall he agree to accept less than the scale fees laid down by law in respect of non-contentious matters undertaken by him.

d) Housing Development

The Legal Profession Act expressly prohibits an Advocate and Solicitor from acting for both the housing developer and the purchaser in a scale of immovable property developed under a housing development.

The above list of rules are by no means exhaustive but have only been highlighted to show their importance. A breach of any of the rules of practice would render an Advocate and Solicitor liable to disciplinary proceedings.

DISCIPLINARY PROCEEDINGS

Any Advocate and Solicitor may be removed from the Roll or suspended from practice or censured if he is in breach of any of the rules regulating the practice and etiquette of the profession. An Advocate

and Solicitor may also be subjected to such action if he (a) has been convicted of a criminal offnce as makes him unfit to be a member of the profession; (b) has been guilty of dishonest conduct; (c) has been adjudicated a bankrupt; (d) has done some other act which, if being a barrister or solicitor in England, would render him liable to be disbarred or removed from the Roll or suspended from practice and; (e) has been, or is liable to be disbarred, struck off, suspended or censured in his capacity as a legal practitioner in any other country.

Provisions are also made in the Legal Profession Act for the procedure to be complied with when a complaint has been preferred against any Advocate and Solicitor. An Inquiry Committee hears the merits of the complaint and if after investigation is satisfied that the facts of the complaint merit a formal investigation, the Inquiry Committee may refer the matter to the Chief Justice who then appoints a Disciplinary Committee.

NOTES:

*Paper presented before the Conference on Legal Development in ASEAN Countries in Jakarta, February 5-10, 1979 under the auspices of the National Law Development Center, Ministry of Justice, Indonesia.

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LAW AND THE LEGAL PROFESSION IN THE PHILIPPINES*

*Marcelo Fernan***

The Philippine legal system, rooted in the concept of popular sovereignty and the principle of republicanism, is based on a written constitution, which is the fundamental and supreme law of the land. A semi-parliamentary form of government was sought to be established under the 1973 Constitution.

The Judiciary consisting of one Supreme Court and inferior courts established by law is constitutionally envisioned to be an independent branch of the Government with power, in justiciable cases and controversies, to review the constitutionality and validity of the acts of the other branches of the Government including the legislature and the executive. Parenthetically, however, this power of judicial review does not extend to the Martial Law proclamations, decrees, instructions, orders, and acts issued, promulgated or done by President Marcos as of the coming into force of the New Constitution on January 17, 1973, because the said issuances are expressly validated by the fundamental law.

The body of statutory laws in the Philippines has grown and expanded considerably in the present century, and continues to do so in the wake of the increasing sophistication of contemporary society. Court decisions interpreting and applying the laws constitute a body of jurisprudence that is truly voluminous. Those rendered by the Supreme Court, in particular, are studied closely, for the Philippines adheres to the doctrine of *stare decisis*. There are, in addition, the acts, orders and rulings of administrative and quasi-judicial bodies as well as of local government units.

NOTES:

*Paper presented before the Conference on Legal Development in ASEAN Countries in Jakarta, February 5-10, 1979 under the auspices of the National Law Development Center, Ministry of Justice, Indonesia.

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THE LOGICAL NEED FOR LAWYERS

With such a legal system, the Philippines naturally cannot do without the services and the guiding hand of lawyers. In the formulation and amendment of the fundamental law, the talent and skill of the legal minds of the country remain indispensable. Ordinary legislation, too, has always been dominated by members of the legal profession. President and Prime Minister[1] Ferdinand E. Marcos is the country's premier attorney. With his avowed determination to restore normal democratic processes in the Philippines, the need for the leadership of people experienced in the law looms large and clear.

In the Judiciary, the necessity of lawyers is absolute. No person may be appointed judge unless he is a member of the Bar. And no person may practise law before the courts unless he is an attorney at law.

INTEGRATION OF THE BAR

The Filipino lawyers themselves have been cognizant of their pivotal role in Philippine society. Desirous of becoming more effective leaders of the community, they have long been in the quest for improvement. Among their obsessions has been the integration of the Bar, the clamor for which dates back to the 1920s. When Bar integration finally came in 1973, it was the culmination of many years and decades of exertions, first by leaders of the Bar and then by the general membership of the legal profession.

Integration of the Bar means the official national unification of the entire lawyer population of the Philippines now numbering 31,248 lawyers as of 1982. This requires membership and financial support (in reasonable amount) of every attorney as conditions *sine que non* to the practice of law and the retention of his name in the Roll of Attorneys of the Supreme Court. In the Philippines, Bar integration has been ordained by resolution of the Supreme Court effective January 16, 1973, in consonance with the provisions of Republic Act No. 6397 (effective September 17, 1971) and in the exercise of its constitutional rule-making power. On May 4, 1973 President Ferdinand E. Marcos promulgated Presidential Decree No. 181 constituting the Integrated Bar into a body corporate.

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[1] As of June 30, 1981, President Marcos ceased to be Prime Minister. This is in accordance with the 1981 Amendments to the Philippine Constitution which provided for a modified Presidential system of government.

PURPOSES OF THE INTEGRATED BAR

The Bar Integration Rule (Supreme Court Rule 139-A) mandates the Integrated Bar "to elevate the standards of the legal profession, improve the administration of justice and enable the Bar to discharge its public responsibility more effectively".

In its resolution ordaining Bar integration, the Philippine Supreme Court quotes approvingly from the Report submitted to it by its Commission on Bar Integration, on the matter of integration, thus –

> Designed to improve the position of the Bar as an instrumentality of justice and the Rule of Law, integration fosters cohesion among lawyers, and ensures, through their own organized action and participation, the promotion of the objectives of the legal profession, pursuant to the principle of maximum Bar autonomy with minimum supervision and regulation by the Supreme Court.
>
> The purposes of an integrated Bar, in general, are:
>
> (1) Assist in the administration of justice;
>
> (2) Foster and maintain on the part of its members high ideals of integrity, learning, professional competence, public service and conduct;
>
> (3) Safeguard the professional interests of its members;
>
> (4) Cultivate among its members a spirit of cordiality and brotherhood;
>
> (5) Provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice and procedure, and the relations of the Bar to the Bench and to the public, and publish information relating thereto;
>
> (6) Encourage and foster legal education;
>
> (7) Promote a continuing program of legal research in substantive and adjective law, and make reports and recommendations thereon; and
>
> (8) Enable the Bar to discharge its public responsibility effectively.
>
> Integration of the Bar will, among other things, make it possible for the legal profession to:
>
> (1) Render more effective assistance in maintaining the rule of Law;
>
> (2) Protect lawyers and litigants against the abuses of tyrannical judges and prosecuting officers;
>
> (3) Discharge, fully and properly, its responsibility in

the disciplining and/or removal of incompetent and unworthy judges and prosecuting officers;

(4) Shield the judiciary, which traditionally cannot defend itself except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence;

(5) Have an effective voice in the selection of judges and prosecuting officers;

(6) Prevent the unauthorized practice of law, and break up any monopoly of local practice maintained through influence or position;

(7) Establish welfare funds for families of disabled and deceased lawyers;

(8) Provide placement services, and establish legal aid offices and set up lawyer reference services throughout the country so that the poor may not lack competent legal service;

(9) Distribute educational and informational materials that are difficult to obtain in many of our provinces;

(10) Devise and maintain a program of continuing legal education for practising attorneys in order to elevate the standards of the profession throughout the country.

(11) Enforce rigid ethical standards, and promulgate minimum fees schedules;

(12) Create law centers and establish law libraries for legal research;

(13) Conduct campaigns to educate the people on their legal rights and obligations, on the importance of preventive legal advice, and on the true functions and duties of the Filipino lawyer; and

(14) Generate and maintain pervasive and meaningful countrywide involvement of the lawyer population in the solution of the multifarious problems that afflict the nation."

ORGANIZATIONAL FRAMEWORK

The government of the Integrated Bar is vested in a Board of Governors composed of the President, the Executive Vice President, and Governors representing different Regions. The Philippines is divided into nine Regions, and one Governor is elected to represent each of them. Each Region comprises several Chapters of which all in all there are seventy-seven throughout the country. Each Chapter has its own local

government but has no juridical personality of its own and remains subject to the general authority of the Board of Governors although it has its own Chapter Board of Officers.

The Integrated Bar has a House of Delegates. The Delegates come from the different Chapters. The seats in the House are allocated among the Chapters on the basis of proportional representation; that is, in proportion to their respective lawyer population. The House is presided by a Chairman who is elected by its members. The House is a deliberative body. Among its most important functions is the election of the Governors who in turn elect the Executive Vice President. The Executive Vice President, after a two-year term, automatically succeeds to the Presidency of the Bar.

The Integrated Bar is declared by its By-Laws and the Bar Integration Rule to be strictly non-political. Every activity tending to impair this basic feature is strictly prohibited and is penalized accordingly. No lawyer holding an elective, judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality thereof is eligible for election or appointment to any position in the Integrated Bar or any Chapter thereof. A Delegate, Governor, Officer or employee of the Integrated Bar, or an officer or employee of any Chapter thereof is considered *ipso facto* resigned from his position as of the moment he files his certificate of candidacy for any elective public office or accepts appointment to any judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality thereof.

The positions in the Integrated Bar are honorary. Except as may be specifically authorized or allowed by the Supreme Court, no Delegate or Governor and no national or local officer or committee member shall receive any compensation, allowance or emolument from the funds of the Integrated Bar for any service rendered therein or be entitled to reimbursement for any expense incurred in the discharge of his functions.

PROJECTS AND ACTIVITIES OF THE INTEGRATED BAR

The future will see the Integrated Bar grow in stature and importance as a force in the development and enforcement of law, the administration of justice and, in a larger sense, in Philippine nation-building. Its projects and activities during the few years since its birth in 1973 give cause for satisfaction and optimism. We need only to enumerate the following:

Legal Aid

The Legal Aid program of the Integrated Bar consists in extending free legal assistance to indigent and deserving members of the communi-

ty in all cases, matters and situations where such assistance may be necessary to forestall an injustice. It aims to inject meaning and substance into the constitutional guarantee of equal protection of the laws and thereby help to establish and maintain social equilibrium essential to the rule of law.

Each of the 77 Chapters operates a Legal Aid Office to make legal aid accessible to the masses. There is a National Committee on Legal Aid which aims to promote the establishment and efficient maintenance of Chapter legal aid organizations, and to direct and supervise them; maintain maximum levels of coordination and cooperation with other organizations having similar objectives; receive and solicit aid and assistance from various sources, but taking care that the independent character of Legal Aid is not impaired. Lately, the thrust of the Legal Aid Program is for coordination of legal aid efforts with voluntary Bar associations engaged in legal aid in the Philippines.

Moral Formation

Efforts are being exerted by the Integrated Bar affecting the system of Philippine legal education with the end in view of ensuring a more rigid moral formation of future lawyers. There is a growing conviction that the subject of Legal Ethics which is offered only in one semester during the last year in the law school should be stressed throughout the entire four years of law study so as to indelibly inculcate ethical principles into the mind, heart and soul of those who would be entrusted with a vital role in the administration of justice.

Moral Fitness for Admission to the Bar

Representations have been made by the Integrated Bar for the Supreme Court to impose more stringent requirements regarding a person's moral fitness for admission as a member of the Bar. Present rules require an applicant for admission to file with the Clerk of the Supreme Court three satisfactory testimonials of his good moral character by three members of the Bar. The Integrated Bar is urging that the Supreme Court with the help and assistance of the Integrated Bar should conduct a thorough investigation of the applicant's moral fitness especially as to how he is regarded in the community in which he is best known.

Accreditation of Law Schools

The Integrated Bar has made representations with the Supreme Court and with the Ministry of Education and Culture for the setting up of a

system of accreditation among law schools in order to help upgrade their standards. Under a system of accreditation, only those law schools that measure up to prescribed standards or criteria shall be entitled to certain prized benefits, privileges, support and assistance from the authorities.

Professional Ethics

The Integrated Bar is in the midst of reexamining, updating and strengthening the present Canons of Professional Ethics adopted in 1917. Predictably, within the next few months, new canons will be adopted by the Integrated Bar for observance by all its members.

Continuing Legal Education

In order to keep lawyers abreast of legal developments, the Integrated Bar publishes an official quarterly *Journal*, a free copy of every issue of which is given to every member of the organization.

Law libraries are put up in the national headquarters and the several Chapters of the Integrated Bar. Then, too, lectures on law and jurisprudence are often presented by the Integrated Bar to all its members at the national and local levels.

Discipline and Disbarment

Not blind to defects in its own ranks, the Integrated Bar is responding to the challenge of policing its own members. It has submitted to the Supreme Court a draft of rules which would grant it jurisdiction over cases of discipline and disbarment of lawyers.

Screening of Judges

Candidates for judicial and related positions are screened by the Integrated Bar. Screening is done according to certain guidelines prescribed by the Board of Governors. Applications and nominations are submitted to the corresponding Chapters which do their own screening and then communicate the results thereof to the Board of Governors through the Governors of their respective Regions. The Board as well as the individual Governors may conduct their own inquiries on the fitness of the candidates. Approved lists of candidates for judicial positions are submitted by the Board to the Supreme Court as well as the Office of the President. While the power of appointment of judges resides exclusively in the President, the Supreme Court is traditionally consulted on this matter.

Profiles of Judges

Some Chapters of the Integrated Bar conduct so-called profiles of judges. This means that judges are individually rated by the practitioners on the basis of certain accepted criteria such as: integrity and moral character; proficiency in the rules of procedure and evidence; judicial temperament and courtroom demeanor; attitude and behavior towards lawyers appearing before them; quality (style and substance) of decisions, orders and rulings; industry, diligence and dedication in the performance of judicial duties; and speed and dispatch in disposition of cases and incidents. The profiles are kept confidential but are communicated to the respective judges for their own guidance.

Some judges have broached the idea that the profiles should extend to fiscals to be profiled by the judges and practitioners as well as to the practitioners to be profiled by the judges and fiscals.

Dialogues among Judges, Fiscals and Practitioners

The holding of dialogues among judges, fiscals, and practitioners by the Chapters of the Integrated Bar helps in removing irritants and causes of misunderstandings and fosters the speedy disposal of pending litigations. It is felt that there should be more frequent dialogues of this nature.

Security of Tenure of Judges

The Integrated Bar has consistently batted for the security of tenure of the members of the Judiciary. This deep concern was formally expressed by the Board of Governors on December 2, 1977 in a Board Resolution aimed to promote the independence of the Judiciary. The resolutory portion of the Resolution is quoted thus:

> NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED UNANIMOUSLY by the Board of Governors of the Integrated Bar of the Philippines in special session assembled, and upon mass motion, pursuant to Resolution No. 3 of the Third House of Delegates dated May, 21, 1977, that:
>
> Recognizing the urgency of restoring normalcy to the judicial system, it is the sense of the Integrated Bar that the President fix a limited period for the final acceptance of all resignations of unfit and undesirable incumbent members of the judicial system, and to declare that all tenders of resignations not accepted as to the lapse of that period are effectively denied.

Military Administration Matters

The plight of persons under detention or investigation by the military authorities has always been close to the heart of the Integrated Bar. The Integrated Bar has repeatedly held purposeful conferences with the Minister of National Defense, the representatives of the Chief of Staff, and the Judge Advocate General of the Armed Forces, seeking to alleviate the situation of detainees. As a result of these representations and dialogues, the Government has modified certain procedural rules, and brought them into effect. For instance, Presidential Decree 328 has been promulgated, liberalizing the summary preliminary investigations by the military. Every detainee is now entitled to know why he is being detained and to have counsel represent him in his investigation.

The military authorities have agreed with the IBP that besides the provincial fiscal, a lawyer to be designated by the corresponding IBP Chapter officers should be included as a member of every Provincial Investigation Coordinating Committee (PICC) that reviews the charges against persons detained by the Provincial Constabulary. The Integrated Bar representative is duty-bound to see to it that due process is given to all detainess.

For the protection of the public the Integrated Bar has repeatedly emphasized the need for training military investigators in the proper procedures.

CONCLUSION

The practice of law in the Philippines, as elsewhere in the world, is greatly affected with public interest. It is, therefore, for good reason, regulated by law. Lawyers are officers of the court; they are an essential cog in the administration of justice in the Philippines. It is only from their ranks that judges are drawn to man the courts; it is they who are privileged by law to practise before the tribunals of justice. The lawyers are the leaders of the nation. Their presence and influence are felt in all offices and branches of the Government and in the private sector, in education, business, agriculture, industry, labor, in the localities and in the vast expanse of the national community. However, leadership entails concomitant responsibilities and the lawyers must rise to the challenge thereby posed.

The integration of the Philippine Bar – which has been the result of the overwhelming clamor of the lawyers themselves – provides the lawyers with an organization, a system, a mechanism by which they may

act in concert and pool their resources together to fulfill the objectives of their noble calling. However, water cannot rise higher than its source. The Integrated Bar cannot be any better than its members. Organization should not be allowed to obscure the need to uplift the individual lawyer, to imbue him with a sense of idealism, a sense of dedication, a sense of service, and the realization that he belongs to a profession whose end is not money but justice and whose aim should therefore be to make the law, in letter and spirit and its administration and implementation, a true and faithful servant of justice.

THE LEGAL PROFESSION IN SINGAPORE*

*T.P.B. Menon***

HISTORICAL BACKGROUND

Singapore was founded by Sir Stamford Raffles in 1819. It was a British Colony from 1819 to 1958. It became a self governing State in 1959. It became an independent Republic on the 16th September 1965. That short summary telescopes into sharp focus 159 years of the history of modern Singapore.

The law of England was introduced to Singapore with the Second Charter of Justice in 1826. English law as it stood in 1826 was to apply to Singapore with such modifications as the various customs and religious beliefs of the peoples of the Island permitted. In the beginning there was some controversy as to the *lex loci* of the Island. This controversy was put to rest by the Privy Council in 1872.[1]

The introduction of English law into the Island also brought with it English institutions for the administration of justice. The first Court of Justice was set up soon after the introduction of the Second Charter in 1826. The Court was presided over by a Recorder. The persons who were allowed to plead in the Court were called law agents. These early law agents were not legally qualified. They were invariably merchants who had trading interests in the region. The first person with proper legal qualifications to be admitted as a law agent was an Englishman[2] in 1859.

The year 1873 is an important landmark in the judicial history of the legal profession in Singapore. It was in that year that the Courts Ordinance[3] was passed. That Ordinance put the Bar on a "proper footing". It provided that only persons with proper legal qualifications could be admitted to the Bar. Barristers and solicitors of the United Kingdom

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[1] *Ong Cheng Neo* v. *Yap Cheah Ne* (1872) 1 Ky. 326.

[2] John Atkinson. See One Hundred Years of Singapore, Vol. 1 p. 172.

[3] Ordinance No. 5 of 1873

and articled clerks, who passed local examinations, were entitled to be admitted to the Bar. The Court Ordinance of 1873 also provided for a yearly certificate to be taken out by the advocate and solicitor upon payment of an admission fee. It took a further 21 years after the introduction of the Courts Ordinance of 1873 for the first Asian[4] to be admitted to the Singapore Bar in 1894.

PRESENT POSITION

The Legal profession in Singapore is a fused one and practitioners are known as "advocates and solicitors". Every person admitted to the Bar in Singapore can practise as both an advocate and as a solicitor, that is, he can either do solicitor's work in his office or appear in the Courts. The position is very different from that existing in England where only a barrister can appear and plead in the Courts on behalf of his clients.

As at the date of writing this paper,[5] there were 665 advocates and solicitors on the Roll in Singapore. Of these, 274 are barristers or solicitors who have qualified in England and 391 are law graduates of the University of Malaya (in Singapore) and University of Singapore. As Singapore has a population of just over 2.2 million,[6] there is very roughly one advocate and solicitor to every 3.300 persons in Singapore. Of the advocates and solicitors on the Roll about 356 are of less than seven (7) years standing. This means that 56% of the Bar is made up of advocates and solicitors who are comparatively junior at the Bar.

Advocates and Solicitors have the exclusive right to appear and plead in all the Courts of Justice in Singapore and have between themselves the same rights and privileges without differentiation.[7] However, the Attorney General and certain law officers have also the right to appear and plead in the Courts in Singapore on behalf of the Government and certain Statutory Boards.[8] If either the Attorney General or the Solicitor-General appears personally in Court then he is accorded priority.[9] If any unauthorised person "acts" as an advocate and solicitor or wilfully or falsely pretends to act as an advocate and solicitor then he commits an offence for which he can be imprisoned or fined.[10] Further, only

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[4] The first Asian was Song Ong Siang.

[5] 31st day of October 1978.

[6] This is based on the last census.

[7] See Section 33 of the Legal Profession Act (Cap. 217).

[8] See Section 33 (2) of the Legal Profession Act.

[9] See Section 33 (3) of the Legal Profession Act.

[10] See Section 35 of the Legal Profession Act.

advocates and solicitors can prepare certain types of legal documents relating to immovable property or file any process in the Courts in "expectation of a fee or reward."[11]

There is no prohibition however against any person who wants to represent himself from appearing in the Courts or preparing documents relating to immovable property or filing any process in the Courts.

THE LEGAL PROFESSION ACT

The legal profession is governed by the Legal Profession Act[12] (hereinafter referred to as "the said Act") and the Rules of Etiquette.[13] Since the coming into force of the said Act in 1967 various Rules have been made thereunder to regulate the enrolment of "qualified persons"[14] and the conduct of advocates and solicitors in the practice of their profession.

The following Rules have so far been gazetted:

(a) The Legal Profession Rules.
(b) The Legal Profession (Oral Examination) Rules.
(c) The Solicitors' Trust Account Rules.
(d) The Solicitors' Accounts Rules.
(e) The Accountant's Report Rules.
(f) The Solicitors' Accountant's Certificate Rules.
(g) The Solicitors' Compensation Fund Rules
(h) The Legal Profession (Articled Clerks) Rules.

THE LAW SOCIETY

One important feature of the said Act is that it established the Law Society of Singapore of which all practising advocates and solicitors are members by operation of law.[15] The Law Society is vested with powers *inter alia* to maintain and improve the standard of conduct and learning of the legal profession and to represent, protect and assist members of the legal profession in Singapore.[16] The said Act also provides for non-practitioner members to be members of the Law Society but these non-practitioner members are not entitled to hold office in the Law Society

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[11] See Section 35 (2) of the Legal Profession Act.
[12] Laws of Singapore (Cap. 217).
[13] See Mallal's Supreme Court Practice, Vol. 2.
[14] See the definition of "qualified person" in section 2 of the Legal Profession Act.
[15] See Section 42 of the Legal Profession Act.
[16] See Section 39 of the Legal Profession Act.

or to attend and vote at any general meeting of the Law Society.[17] The Law Society is governed by a Council (often referred to as "the Bar Council") consisting of elected members and a statutory member. At present there are twelve elected members. This should increase to 15 in 1979. Elected members hold office for a period of two (2) years. As a result of a procedure that was adopted in 1967 roughly half the total composition of the Council will cease to hold office at the end of each year so that new members may be elected. The composition of the elected membership of the Council will increase with the admission of further members to the Bar. The said Act also provides for the President of the Law Society for the ensuing year to remain in the Council the following year as a statutory member. This process ensures that there is some continuity in the composition of the Council for any particular year.

THE BOARD OF LEGAL EDUCATION

The other important feature of the said Act is that it established the *Board of Legal Education*. The purposes of the Board may be briefly summarised as follows:

(a) To register qualified persons and articled clerks seeking admission as advocates and solicitors.

(b) To provide for the training, education and examination of qualified persons and articled clerks intending to practise the profession.

(c) To exercise supervision and control over qualified persons and articled clerks.

(d) To make recommendations to the appropriate authorities on the syllabus, courses of instruction and examinations leading to the qualification of qualified persons.

(e) To grant prizes and scholarships and to establish lectureships in educational institutions in subjects relating to law.[18]

The Board is made up of representatives of the Law Faculty of the University of Singapore, representatives of the Law Society of Singapore, representatives of the Minister for Law, the Attorney General (or his nominee) and a Judge of the Supreme Court nominated by the Chief Justice. The present Chairman of the Board is a Judge[19] of the Supreme Court.

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[17] See Section 43 of the Legal Profession Act.

[18] See Section 5 of the Legal Profession Act.

[19] Mr. Justice A.P. Rajah.

The Board has been responsible for conducting the Post-Graduate Practical Course since 1975. All "qualified persons" who aspire to be admitted to the Bar must attend and satisfactorily complete the Post Graduate Practical Course in Law. In addition all "qualified persons" are required to do six months pupillage (unless otherwise exempted by the Board)[20] with an advocate and solicitor who has been in active practice for a period of not less than 5 years before they are admitted to the bar.

Although the Board of Legal Education has been responsible for conducting the Post Graduate Practical Course since 1975 it has not been able to find a full-time director to take charge of the Course. The Course has since 1975 been run by a part-time director appointed from members of the Board. The Board is now seeking the services of a full-time director and it is hoped that a person with the necessary experience and qualifications will be found in the near future.

DISCIPLINARY PROCEEDINGS

The power to admit a person as an advocate and solicitor is vested in the Courts. The Courts as the admitting authority are also vested with the power to censure, suspend or strike off the Roll any advocate and solicitor on due cause being shown.[21]

All complaints against an advocate and solicitor are in the first instance made to the Council. The Council refers the matter to an Inquiry Committee consisting of five (5) members of the Council or former members of the Council.[22] The Inquiry Committee is a fact finding body. After conducting investigations, the Inquiry Committee makes a report to the Council for its consideration.[23] The Council will then have to decide whether a *prima facie* case has been made out against the said solicitor. If the Council is of the view that there is no prima facie case or that no offence of sufficient gravity has been disclosed then the Council can deal with the matter. The Council may either warn the solicitor concerned or impose a fine up to a maximum of Dollars Two hundred and fifty (S$250.00). If on the other hand an offence of sufficient gravity has been disclosed, the Council through its President will request the Chief Justice for the appointment of a Disciplinary Committee consisting of three (3) advocates and solicitors of not less than seven (7) years standing.

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[20] Section 12 (4) of the Legal Profession Act.

[21] See Section 84 (1) of the Legal Profession Act.

[22] See Section 85 (1) of the Legal Profession Act.

[23] See Section 87 (2) of the Legal Profession Act.

The Disciplinary Committee is an *ad hoc* Committee independent of the Council. It is appointed by and responsible to the Chief Justice. After hearing and investigating any matter referred to it the Disciplinary Committee is required to record its findings. It is the function of the Disciplinary Committee to determine whether:

(a) any cause of sufficient gravity for disciplinary action exists against the advocate and solicitor or

(b) that while no cause of sufficient gravity exists for disciplinary action, the advocate and solicitor should be reprimanded; or

(c) that cause of sufficient gravity exists for disciplinary action.

The findings and determination of the Disciplinary Committee are drawn up in the form of a report. A copy each of the report is then submitted by the Disciplinary Committee to the Chief Justice, the Law Society and the advocate and solicitor concerned. If the findings of the Disciplinary Committee are adverse, then the law Society is required without further direction to make an application to the High Court (of three Judges) for the solicitor to be disciplined. Any advocate and solicitor dissatisfied with the decision of the High Court has recourse by way of appeal to the Privy Council.

It is significant to note that the legal profession is the only profession in Singapore at the moment which regulates its own conduct. The High Court and the Privy Council are the ultimate arbiters of the conduct of a member of the legal profession. It is hoped that this will not be altered.

COMPENSATION FUND

The Law Society is required under the said Act to maintain and administer a fund known as "the Compensation Fund" and every practising advocate and solicitor is required to make an annual contribution to the Fund. The present annual contribution is $100.00 per advocate and solicitor. The Society is empowered if the Council thinks fit to make a grant to any person who has sustained loss in consequence of dishonesty on the part of any advocate and solicitor or clerk or servant of any advocate and solicitor in connection with any trust in Singapore of which the advocate and solicitor is a trustee. However no grants are to be made where such loss came to the knowledge of the person sustaining the loss before the 31st of December 1962.

The Compensation Fund now stands at $566,426.82.[24] In recent years, there have been a number of cases where advocates and solicitors and their clerks have committed criminal breach of trust of clients,

[24] This was the figure as of the 31st October 1978.

moneys. A few months ago, the Law Society paid out about $48,000.00 to various clients of a former solicitor who was convicted of criminal breach of trust of clients moneys. A few more of such claims on the Compensation Fund are expected in the near future. Although the number of advocates and solicitors who do misappropriate clients moneys form a minority and a very small percentage of the total Bar, yet they nevertheless constitute a serious problem.

FUTURE DIRECTIONS

Recently the Minister for Law had occasion to announce that the Government would be introducing legislation in Parliament to amend the Legal Profession Act. Basically these proposed amendments may be summarised as follows:

(a) that compulsory voting be introduced for election of members to the Bar Council. If any advocate and solicitor fails to vote without any valid reason, he shall be liable to a fine of a maximum of $500.00;

(b) that there will be a restructuring of the composition of the Council. The details of this are not available.

(c) that the Bar Council will be given additional powers to deal with the investigation into and the control of clients moneys held by advocates and solicitors.

Although it may be somewhat premature to comment on these changes the writer hopes that the Government will have the foresight and the wisdom to allow the legal profession to retain its independence to regulate its own affairs. An independent Bar is the corner stone of a democratic State. Take that away and what is left may not be worth having.

CONCLUSION

The Legal profession has been the subject of criticism in most democratic countries in recent years. Singapore is no exeception. Perhaps some of the reasons for this can be found in the opening paragraph of the Riddle Lecture delivered by Lord Hailsham of St. Maryleborne on the 24th day of May 1978. Lord Hailsham said:

> "I speak as a lawyer among lawyers, and I have to tell you sadly that the beginning of wisdom for us lawyers is to recognise that we are, and will always remain, an unpopular minority. How can it be otherwise? To begin with, in all contested litigation one party at least has got to lose. If a man wins his case it is natural that he should put down his success to the

> justice of his cause and perhaps to his own transcendent performance as a witness. But, if he loses the last person he will blame is himself. He will condemn first the incompetence or weakness of his own advisers and advocate, and then the stupidity, or worse, of the judge, and finally the obliquity and cunning of the opposing advocate or solicitor, all of them members, it must be said, of the legal profession. So it is our fault if anything goes wrong. But, if all goes right it is nothing to our advantage. It is the same with non-contentious business. Much of my life, and no doubt much of yours, has been, or will be, spent in explaining to people that because of one legal consequence or another they cannot do what they wish to do, or at least not in the way they wish to do it. And then, of course, there is the cost. The long years spent in acquiring a qualification, and the still longer time required in gaining professional experience, count for little in the client's or the public eyes. If our work, like the doctor's, consisted largely in relieving physical pain or prescribing placebos, how much better liked we would all be."[25]

It is not possible in a short paper of this nature to deal with every aspect of the legal profession in Singapore. An attempt has been made in this paper to give the reader an indication of how the legal profession in Singapore regulates itself. It is only hoped that this paper will in some small measure provoke discussion at the Conference.

NOTES:

*Presented before the Conference on Legal Development in ASEAN Countries in Jakarta, Indonesia, February 5-10, 1979 under the auspices of the National Law Development Center, Ministry of Justice, Indonesia.

**Member, Law Society of Singapore and Barrister.

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[25] *The Independence of the Judiciary in a Democratic Society* by Lord Hailsham reproduced in 2 Malayan L.J. cxv (1978).

LAW AND LEGAL PROFESSION IN THAILAND*

*Sansern Kraitchitti***

LEGAL SYSTEM

It is established that the Code of Manu, the ancient Hindu Jurisprudence, with modifications and additions, formed the basis of the ancient Thai legal system during or even before the Sukothai period (1238-1350). During the Ayuthya period the Thai legal system developed into a form which was to last until the close of the nineteenth century. *Dhammasattham,* the modified Code of Manu, was established in the early years of the period as the law Code of the realm. However, alongside with the *Dhammasattham*, there grew another set of rules which developed from the actual decisions of former kings in administering justice. In the course of time, the royal decisions became a set of rules known as *Rajasattham.*

After the fall of Ayuthya, King Rama I (1782-1806), the founder of Bangkok, appointed a Royal Commission to revise the law of the land. The revised Code of 1805, commonly known as the "Law of the Three Great Seals", was more than a mere restatement of the prevailing penal and civil law. It contained not only the *Dhammasattham* of Ayuthya but also the existing royal decrees and edicts. Among its main features were laws of evidence, of ordeals by fire and water, of appeal, and of husband and wife. The Code was unique in its achievement and practical in its character, and its main part remained applicable throughout the Kingdom for 103 years.

During the reign of King Rama V, a comprehensive law reform with the introduction of western jurisprudence was undertaken. The law of the land, particularly the Criminal law, had by the end of this reign, been brought into line with the modern systems of the West, whilst the work of codification in other fields was well under way. In modernizing the law, Thailand would have preferred to adopt English law, because many distinguished members of its legal profession had been trained in England and had become well acquainted with English law. However, it was realized that however excellent the English system might be, it was

peculiar to the English circumstances in which it was originated and developed and it seemed most impracticable for any country to adopt a system of law that could not be found in any accessible form. With this disadvantage in view, save in certain branches of the Thai law, such as the laws of Bills of Exchange and Bankruptcy, over which English influence was and still is strong, Thailand, for its general law reform, turned to the Continental tradition of codification in which the leading principles of Roman jurisprudence prevailed in logical form and with scientific arrangements.

A Royal Commission on codification was set up in 1897. The mission culminated in the promulgation of the Penal Code of 1908 which contained well recognized principles of law with certain modifications for the Thai environment. Under the Code only six modern forms of penalty were recognized, *i.e.* death, imprisonment, fines, restricted residence, forfeiture of property to the State and bond for keeping the peace. The Code, with a few minor amendments, remained in force for almost half a century and was finally superseded by the Penal Code of 1956.

Pending the introduction of the Codes of Procedure on modern principles, other Royal Commissions were also appointed at about the same time to study and draft transitory laws on procedure. This resulted in the passing of the Law of Evidence (1895), the Law on the Organization of the Courts in the Provinces (1895), the Transitory Criminal Procedure Code (1896), and the Transitory Civil Procedure Code (1896). While the Law of Evidence and the two Codes of Procedure were based mainly on English models, the Organization of the Courts was partly patterned after the French system. Owing to some defects in these Codes, however, the Act on the Organization of the Courts and the Civil Procedure Act with all necessary modifications were duly passed in the year 1908 superseding the Law on the Organization of the Courts in the Provinces (1895) and the Transitory Code of Civil Procedure (1896) respectively. Further, the Transitory Code of Criminal Procedure was supplemented by a series of enactments such as Rules of Procedure for the Court of Appeal (1901), (1905) and Laws of Procedure for the Supreme Court (1914), (1918). But again, these Acts were only meant to be temporary till the Codes of Procedure proper were completed.

The dawn of the twentieth century witnessed legislative efforts on a more extensive and fundamental scale. A plan for codifying other laws was laid in the hands of a new Royal Commission, a body of legal experts, both foreign and Thai, whose major assignments were to draft the Civil and Commercial Code, the Code of Criminal Procedure, the Code of Civil Procedure and the Law on the Organization of the Courts.

During the reign of King Rama VI, a good deal of legislation was passed, including the first two Books of the present Civil and Commercial Code (1925). The third and fourth Books of the Civil and Commercial Code were promulgated of the absolute monarchs.

On 24 June 1932, absolute monarchy was abolished and a constitutional form of government was introduced. The final stages of the general scheme of law reform were drawing to a close. In 1934 the present Law on the Organization of the Courts was promulgated. Under this law, the law courts are classified with their respective jurisdiction. The following years, the Civil and Commercial Code, having been under preparation for over three decades, was completed. Within the space of six Books were contained 1,755 sections, wherein were laid down general propositions governing such civil and commercial matters as persons, capacity, domicile, obligations, torts, sales, mortgages, hires, agencies, cheques, partnerships, companies and other forms of specific contracts, property, marriage and divorce, wills and intestacy. While the Code profited from modern concepts, especially from its French, German, Japanese and Swiss counterparts, it preserved much that was praiseworthy in the institutions and custom of the country, predominently in such matters as matrimony and inheritance. It was remarkably brief, yet most comprehensive. The practice and procedure of both criminal and civil matter, had also been completely codified and brought into operation by the year 1935, *i.e.* the Criminal and Civil Procedure Codes. These Codes were based fundamentally upon past experience and western practice with certain modifications, providing elaborate safeguards of justice.

At the present time, the criminal law is largely governed by the Penal Code of 1956 which superseded the Penal Code of 1908. This has not, however, introduced radical changes, for the Code of 1908 was already a modern code and had worked remarkably well and was familiar to judges and lawyers. The improvements effected consist chiefly in a more logical and scientific arrangement of the provisions and better phraseology, for instance, "attempt" and "criminal intent" have been more clearly defined. Moreover, certain concepts in modern criminology have been introduced, such as corrective training and preventive detention. The Civil and Commercial Code described above, with a few amendments, remains the solid foundation of the civil law of the land. Its flexibility and the ingenuity of its interpreters, in particular, that of the judges of the Supreme Court, have helped to make the Code remarkably adaptable to the changing needs of modern society. Both the Criminal and Civil Procedure Codes of 1935 with a number of amendments

still form the essential basis of legal practice covering all stages of legal proceedings in various courts of the country.

It is worthy of special notice that in four provinces in the extreme south, *viz:* Satun, Yala, Narathiwat and Pattani, where about three quarters of the Muslims in the country (approximately 3 percent of the whole population) are concentrated, their own religious laws and usages still hold in regard to matters of matrimony and inheritance among themselves. Subject to this exception it can be said that the present legal system is uniform throughout the country.

LEGAL PROFESSION

Three main classes of persons who are regarded to be in the legal profession in Thailand are judges, public prosecutors and practising lawyers.

Judges

In Thailand, all judges are professionals. Political considerations play no part in the appointment of judges. The method of judicial appointment is and has always been that of nomination. No one can be appointed judge in a Court of First Instance unless and until he has undergone a minimum training of one year as a judge-trainee. The method by which judge-trainees are recruited is by an open competitive examination system. This consists of written and oral tests.

Candidates for this examination must be at least twenty-five years of age with an LL.B. degree and a degree of Barrister-at-Law together with two years' standing as a court registrar, deputy court registrar, official receiver, public prosecutor, practising lawyer or other government legal officer. A foreign law degree alone does not qualify any person for the examination, but any person with a foreign law degree and a Thai degree of Barrister-at-Law, together with one year's standing as a court registrar, etc., who wishes to become a judge-trainee is exempt from the competitive examination, as is the candidate with a Thai Master of Laws degree or a Thai Doctor of Laws degree, together with one year's standing as a court registrar, etc. He must however, pass the written and oral tests set up especially for him.

Among those excluded from candidature for judgeships are aliens, insolvent persons and persons convicted of any criminal offence and sentenced to any term of imprisonment.

Women are eligible for judgeships provided that they pass the competitive examinations therefor. Women with no legal qualifications are also eligible for the competitive examinations for associate judgeships in Juvenile Courts.

The competitive examination for judge-trainees is designed to fufill a double purpose: first, to eliminate candidates likely to be unsuitable, and second, to provide guidance for setting up an order of seniority on their appointments. The examination is conducted by a board of examiners, usually consisting of a number of judges of the Supreme Court and of the Court of Appeal.

This competitive examination is held approximately once a year, and is generally regarded as the hardest of all law examinations held in the country.

The one-year training course of judge-trainees aims at a balanced education of the individual and insists upon both knowledge and wisdom. The training devotes much attention to the practical skill on the bench. A good deal of time is also allotted to discussions and classes in allied subjects such as Penology, Criminology, Psychology, Logic, Current Economic and Social Problems. It is to be noted that the aim is not to produce experts in these subjects but to ensure that members of the Judicial Service have a good understanding of such matters and a foundation on which to build up sufficient knowledge for their service.

Under the Judicial Service Act of 1954, as well as the Judicial Service Act of 1978 which supersedes it, appointments, promotions, transfers and removals of judges are made by the King upon the recommendation of the Judicial Service Commission.

The compulsory retirement age for judges, like that for civil servants, is sixty. A judge may be dismissed from the Service only for proved misconduct or incapacity or infirmity. In case of misconduct the accused judge has full opportunity to defend himself againts the charge that has been made against him before the Board of Discipline which consists of three judges. If on the report of the Board, the Judicial Service Commission is satisfied, having regard to all circumstances of the case, that the dismissal or reitrement of that judge is desirable in the public interest, their decision will be final, and they will advise the King to do so. In case of incapacity or infirmity, the retirement of the judge concerned must also be approved by the Judicial Service Commission.

Public Prosecutors

As in the case of judges, all public prosecutors in Thailand are also professionals. Qualifications to hold the office of public prosecutors are almost the same as those of judges. However, the eligible age is lowered from 25 years to 23 years. Those wishing to become public prosecutors have to sit for an examination arranged periodically by the Department of Public Prosecution, Ministry of Interior. If they are suc-

cessful, they will be appointed as public prosecutor-trainees, and after one year of training, they will be appointed public prosecutors. All matters concerning appointments, promotions, transfers or disciplinary measures of public prosecutors are under control of the Public Prosecution Service Commission of which the Minister of Interior is the chairman.

The main function of public prosecutor is to conduct criminal cases against offenders.

Criminal proceedings in Thailand differ from those of some other countries in that criminal prosecution may be instituted either by the public prosecutor or by the injured person himself. When the injured person himself prosecutes the offender, the matter will not go through the usual process, i.e. through administrative official or police officer and public prosecutor. In practice, however, most criminal cases are conducted by public prosecutors.

Apart from conducting criminal cases against offenders, the public prosecutor has many more functions in criminal and civil cases as well as in others. The following examples may assist in understanding the functions of public prosecutors in Thailand.

When an official has been prosecuted for an act performed in the course of his duty, or when a private person has been prosecuted for an act done under a lawful order of an official or of having helped an official carrying out his duty, such an official and private person may request the public prosecutor to defend them. The public prosecutor may do so if he is of opinion that they are not guilty of the offence charged.

A public prosecutor may represent the Government in all civil cases, whether the Government is the plaintiff or the defendant. Whenever a government organization is about to bring an action against anyone or an action is brought against it, it may request the public prosecutor to represent it.

When an official has been used for an act performed in the course of his duty, or when a private person has been sued for an act performed under the lawful order of an official or of having helped an official carrying out his duty, such an official and private person may request a public prosecutor represent them. The public prosecutor may do so at his discretion.

The Civil and Commercial Code provides many instances in which a public prosecutor may make an application to the Court in various matters, *ex.* to adjudge incompetent a person of unsound mind; to appoint a temporary manager to a juristic person when there is a vacancy and damage may ensue from the delay; to dismiss the manager of a foundation; to cancel any resolution of an association which has been passed

contrary to the regulations of the association or contrary to law; to appoint a guardian, *etc.*

The Public Prosecutor has several other duties to perform under various Acts, which cannot be completely listed here. For example, the Public Prosecution Department gives legal advice to government organizations and municipalities. Public prosecutors in the provinces are also legal advisors to the Commissioners of the provinces.

Practising Lawyers

Unlike in some other countries, there are no legal requirements for a person intending to become a Thai practising lawyer to first serve as an articled clerk or a pupillage in a lawyer's office. However, law graduates who wish to become practising lawyers usually attach themselves to some established practising lawyers so as to gain experience in advocacy as well as in drafting legal papers.

Practising lawyers in Thailand are divided into two classes, *viz.* first-class lawyers and second-class lawyers. First-class lawyers are those who are law graduates. Second-class lawyers are of two categories: (1) those who have obtained a diploma in law from Thai universities and (2) those who have passed a law examination for second-class lawyers held by the Bar Association. There is no difference in the kind of work to be undertaken by first-class lawyers and second-class lawyers; the only difference between the two classes of lawyers lies in the fact that first-class lawyers have the right of audience in all courts throughout the country and have the right to wear the authorized gown of the Bar Association whilst second-class lawyers can practise in only ten provinces specified in their licences and have no right to wear such gown. The underlying reason for allowing persons who only passed law examinations for second-class lawyers to practise as second-class lawyers is that, there are too few qualified lawyers to handle all cases in some parts of the country, hence, second-class lawyers come in as additions for those fully qualified in those particular parts.

A person wishing to become a practising lawyer must be, *inter alia*, a Thai citizen and *sui juris*. He must apply for admission as a practising lawyer to the Bar Association. Having satisfied that, the applicant is qualified to be admitted as such. The Bar Association issues him a licence to practise. As long as he continues to practise, the licence must be renewed annually.

By statute, the Bar Association is given power to lay down rules regulating professional practice and conduct of lawyers, breach of which constitutes professional misconduct. Where a complaint of professional misconduct is filed against a particular practising lawyer, the Bar Asso-

ciation appoints a committee consisting of three of its members to investigate the complaint and, if, there should be a *prima facie* case, pursues it before the Disciplinary Committee which consists of not less than nine of its members. The Disciplinary Committee has to consider whether the facts established, constitute conduct unbecoming a lawyer. If so, the Disciplinary Committee reports the case to the Bar Association for further consideration by the Benchers. If the Benchers of the Bar Association also find the lawyer in question guilty of breach of professional conduct, the Bar Association may make an order, according to the gravity of the offence, namely, to admonish him, to suspend him from practice for a period not exceeding three years, or, in an extreme case, to strike his name off the Roll.

NOTES:

*Paper presented before the Conference on Legal Development in ASEAN Countries in Jakarta, Indonesia, February 5-10, 1979 under the auspices of the National Law Development Center, Ministry of Justice, Indonesia.

**Vice-President, Supreme Court of Thailand.

POPULARIZING THE LAW (P O P L A W)

A Program of the University of the Philippines Law Center

(Editor's Note: ALJ will be featuring programs or activities of special interest to the ASEAN legal community. In a recent visit to ASEAN capital cities, the Editor was impressed by the growing interest in raising the level of popular awareness with respect to legal rights and obligations. At Chulalongkorn University in Bangkok, for instance, there is a multidisciplinary group that is devising methods of studying the legal problems of people in the rural areas. In Indonesia, the Program for Legal Aid Movement (PPBHI) is doing pioneering work with some funding support from the Jakarta City government. It is hoped that this feature will share with others the UP Law Center experience and work, as it contributes to national efforts toward equipping all the people with basic capability to utilize the legal system to fullest advantage.)

Law is for all the people – not just for lawyers and politicians. Everyone must have a working knowledge of the law so they can use this to assert and protect their rights and take full advantage of the legal system.

How to bring this about? POPLAW is the answer of the staff of the Law Center and the College of Law at the University of the Philippines. An integrated program designed to bring about functional legal literacy, it has its basic rationale in the Charter of the Law Center which provides that –

> x x x the major purpose of the University of the Philippines in the establishment of this unit is the advancement of legal scholarship, the *protection of human rights with emphasis in the improvement of the legal system* x x x (emphasis supplied)

As in the other ASEAN countries, the task of informing the Filipino people about their rights and obligations under the law is complex and difficult. First, three-and-a-half centuries of colonial experience has resulted in an eclectic legal system – with overlays of Canon, Roman, Civil, Anglo-American and Islamic law which to date have neither been

fully integrated nor sufficiently harmonized with indigenous norms. Second, the law remains largely foreign and elitist as laws continue to be promulgated and interpreted in English (an official language under the Constitution). Third, the "developmental" thrust of legislation has resulted in a proliferation of laws. Even the average educated person would have difficulty keeping reasonably informed of his legal rights and obligations.

The Popularizing the Law (POPLAW) Program comprises six major components, each part designed to integrate into and reinforce the other parts of the program. (See chart.)

BACKGROUND

The Popularizing the Law Program began five years ago in 1977 under Law Dean, Dr. Irene R. Cortes, and Law Center Director Froilan M. Bacungan. A pilot project as well as a curricular program was designed and implemented by Professor Purificacion V. Quisumbing in 1977 and 1978 in cooperation with several "grassroot" organizations, particularly the *Katipunan ng Bagong Pilipina, Aniban ng mga Manggagawang Agrikultura* and SIKAP (a youth organization). As requested by these organizations, the project's target was to "equip the participants with the basic knowledge and skills for a purposeful citizenship participation in community and national affairs."

On the part of the lecturers, the project served to fulfill the legal requirement for government personnel to render "rural service" every year.

The general objectives were quite basic, namely: (1) to develop awareness of the various human rights guaranteed by Philippine laws and the correlative obligations of citizen; (2) to provide participants with a basic knowledge of the law as an instrument for the enforcement and implementation of human rights; (3) to acquaint them with the fundamental procedures of the judicial and administrative system; and (4) to develop a sense of involvement in the efforts toward community and national development.

The curriculum focused on the Philippine Constitution on rights and obligations and the UN Covenants on Human Rights. Lectures on economic rights, for example, included agrarian reform, consumers' protection, workers rights. Social and cultural rights were discussed in terms of family law, property relations, family planning, the child and the law, property relations, family planning, the child and the law. In all

cases, both substantial and procedural aspects of the law were explained.

The uniqueness of the two pilot projects was found in the active role of the participants in running the seminars. The participants undertook to produce *gabays* or "guidelines" papers. These were used as teaching materials in echo seminars which they themselves organized in their respective communities all over the Philippines.

A three-year plan envisions a comprehensive legal literacy campaign comprising six major components, each part intended to integrate and reinforce the other parts. (See the matrix on page 113.) As designed, the components are: Barangay Legal Education Seminars (BLES), Echo Seminars of BLES, Practical Law Teaching, Legal Education Through Mass Media, Research on Community Legal Education, and Developing Legal Resources for Popularizing the Law. The program components reach varying audience levels and involve various activities including teaching, training, research and production of legal resources.

POPULARIZING THE LAW: PROJECTS AND ACTIVITIES

Under Law Center Director Flerida Ruth P. Romero, the Program has been expanded. Five years since its conception, POPLAW is now institutionalized.

The target audience of BLES consists generally of local leaders in government, in education and civic organizations. In three years, 23 seminars have been held in 23 cities and towns all over the Philippines. Approximately 5,000 participants have attended these three-day seminars.

BARANGAY LEGAL EDUCATION SEMINARS (BLES)

This is a series of seminars conducted by the Law Center jointly with the Integrated Bar of the Philippines (IBP) local chapters and local governments. The seminars consist of lectures and open forums presenting basic legal information on such subjects as rights and obligations under the Constitution, family, tenancy, usury and other laws of special interest to the region, and judicial as well as extra-judicial remedies pertinent to needs and problems of the community, such as the *Katarungang Pambarangay* (or *Barangay** Justice) Law.

**Barangay* is the smallest political unit in the village or barrio level.

BLES FOLLOW-UP SEMINARS

These are locally funded replications of the BLES, initiated by the Integrated Bar of the Philippines local chapters, usually in cooperation with local governments. The objective is to increase popular consciousness of human rights at the grassroots level. Civic organizations and local lawyers groups are encouraged to take the lead role in holding as many of these "echo-seminars" which are facilitated by the "graduates" of BLES seminars. Thus far 11 such seminars have been held reaching 1,470 people.

PRACTICAL LAW TEACHING

The main idea of this project is to popularize the law among school children. Law surrounds the individual in society – from conception to death. He must, from the earliest age possible, be imbued with a working knowledge of certain practical aspects of the legal system. Functional legal literacy goes beyond awareness of the rudiments of government, something that students imbibe through existing curricular offerings. It means a practical capability to appreciate how legal rights and obligations serve to enhance meaningful and productive relationships among individuals and between the individual and other units of society, particularly with the government.

The rationale of this project therefore lies in the fact that a society that is governed by law and a sense of justice presumes a citizenry that knows and honors the system of law and justice that the citizens help shape and bring about. Thus, to wait to learn law in law school is to wait too late.

Activities in the project are aimed at providing young people with basic understanding of legal rights and responsibilities to be of practical use in their everyday lives; to equip students with awareness of ordinary legal problems; and, to develop the ability to analyze, evaluate, and, in some situations help to resolve legal disputes.

In the implementation of its objectives, training trainors in practical law is the first stage. Here, there is a collaboration between lawyers and elementary and high school teachers. This collaboration is extended to the task of preparing Practical Law Teaching Kits. In the actual teaching of practical law courses – whether in the form of special offerings or as mini-courses to be integrated in various social studies courses in the curriculum – law students may be utilized as teachers, assistants or legal clinic aides.

This program is presently being developed in cooperation with the University of the Philippines Integrated School teachers and students

and the College of Law. The plan is to have pilot projects in the different regions by the end of three years and to involve the Ministry of Education, Culture and Sports in setting up a national program on Practical Law Teaching.

LEGAL AWARENESS THROUGH MASS MEDIA

This component activity of the POPLAW Program aims at improving popular legal awareness with the use of inter-media facilities. This vehicle makes it possible to disseminate legal information to a wider based audience. For this purpose, format and content of presentations are being prepared according to the medium utilized, such as print, electronic, audio-visual aids, video home systems.

Recently, the Law Center held a multi-media workshop on Popularizing the Law via Mass Media where legal themes were identified and prioritized by private organizations and government agencies. Among the issues identified were related to peace, order and security and people's rights; economic rights; social and cultural rights, including rights of special groups, such as women, children, cultural minorities and workers.

An on-going radio program called *Ito ang Ating Batas* (This is Our Law) is aired for fifteen minutes every week-day morning. Scheduled early to catch the early-rising workers and housewives, the presentations are in Filipino and are focused on practical legal situations. Transportation law, for example, is presented in terms of the obligations of drivers and the rights of passengers in common carriers. In family law, interesting discussions deal with rights and obligations of husband and wife in various situations, on filial relations, and on common conjugal problems. Even more complex concepts such as constitutional rights and obligations are reduced to practical anecdotes and meaningful applications. For instance, what rights does one have when picked up by the police?

Use of print media and television are still being developed. Talk shows are the best avenue for discussing in depth some legal issues. The pace of developing these two outlets for POPLAW is heavily dependent on the production of legal resources for non-lawyers.

POPLAW LEGAL RESOURCES AND RESEARCH ON COMMUNITY LEGAL EDUCATION

The two other components of POPLAW are support activities. The program can only succeed if proper legal resources are developed, reproduced and disseminated to the rural areas where the information is

really needed.* Hence, the priority needs for the next three years include the production of teaching devices for the various audience levels, and, learning kits for different kinds of groups. Among those on the production line are: "Primers" on basic rights and obligations; comic books,** workbooks for school children and teaching kits for teachers and trainors; materials for mass media, such as cassette tapes for radio, script for drama series or talk shows on radio or TV.

A guiding principle in the preparation of materials and the designing of vehicles for legal resources is the utilization of indigenous concepts and forms of creative writing and artistic expression. Hence, being explored are the art forms familiar to folk people, such as puppet show, *duplo, balagtasan, zarzuela* and *comedia.*** Filipino sayings or adages are important in traditional Filipino culture. These too should be used for POPLAW concepts.

The language problem has to be met. As mentioned earlier, laws are promulgated in English but the functional literacy of many Filipinos does not include a capability to grasp the meaning of the law in English – even assuming that the information reaches them. Thus, materials need to be translated in the major dialects of the different regions.

How to make POPLAW materials readily available to the people? The answer is to link up with the Integrated Bar of the Philippines which has its local chapters in every province. The IBP is setting up libraries in several strategic places in the countryside primarily for the continuing legal education of its members. These libraries will now have an added dimension – they will also serve as the POPLAW Legal Resources Centers. The IBP then serves as an added link in the POPLAW "delivery system".

Finally, the validity of the entire program depends on two things: first, the soundness of its premises, and second, the outcome of its activities. The question that must ultimately be answered is – did the program make any difference for the people?

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*External funding support is crucial to this aspect of POPLAW. The Asia Foundation, Philippines, among others has helped in this respect. Some government agencies, such as the Ministry of Public Information and the National Media Production Center (now Office of Media Affairs) have also supported some specific activities.

**"*Justice*" *Comics* are being produced by the WILOCI (University of the Philippines Women's Lawyers Circle), with some funding support from Asia Foundation, Philippines.

***These are different indigenous drama and musical forms.

The research component of the POPLAW program would provide some answers to this query. The most unique feature of the POPLAW Program of the U.P. Law Center is the use of the interdisciplinary approach. A multidisciplinary group of experts in the fields of mass communication, social sciences, education, and of course in the major areas of law, are involved in various aspects of the POPLAW Program. But most important of all, is the involvement of the "recipients" of the service themselves – the rural people, students, etc. These are consulted at the inception of each activity. They contribute to the program by identifying their needs and proposing approaches toward meeting these needs.

ABOUT THE UNIVERSITY OF THE PHILIPPINES LAW CENTER

The Law Center, starting as the Continuing Legal Education and Research Center of the College of Law, became a statutory body on June 15, 1964 when Congress approved its Charter, Republic Act No. 3870 (later amended by Presidential Decree No. 200, issued May 27, 1973). A unit of the University of the Philippines, it enjoys the academic freedom guaranteed all institutions of higher learning by the Constitution of the Philippines.

The Law Center pursues three general objectives, namely, the advancement of legal scholarship; the protection of human rights with emphasis on the improvement of the legal system and the administration of justice; and the assumption of leadership in overcoming the criticism directed at professional competence and responsibility.

In carrying out its mandate, the Law Center undertakes: (1) technical studies and researches in law, with emphasis on Philippine law, particularly on projects for reforms in the judiciary, public administration, civil rights protection, international relations, and law enforcement; (2) law institutes or study programs for continuing legal education; (3) legal studies and researches on request from the various agencies of the Government concerned with law reform; (4) publication of studies, monographs, research papers, articles, and other works and writings on law, with special emphasis on those related to its general objectives and to distribute them at cost to government agencies, judges, lawyers, government administrators and other interested parties. It also performs all other acts as may be necessary for the achievement of its objectives and functions, in accordance with the rules and regulations of the University including the granting of research awards, prizes, scholarships and fellowships.

The Law Center maintains a policy of working with other institutions and agencies both government and private; local, national, regional

as well as international. With a growing network of cooperating organizations, such as the Integrated Bar of the Philippines, it brings its services to all sectors throughout the country. The legal profession remains its main concern but the Law Center is also committed to undertake programs designed to "popularize the law" among non-lawyers including teachers, peasants, workers, village leaders and the youth.

Operating through three main Divisions – Research and Law Reform, Continuing Legal Education, and Publications – the University of the Philippines Law Center carries out its work of encouraging and supporting legal scholarship, promoting professional competence and responsibility, creating general awareness of the law, raising legal literacy and contributing toward the improvement of the Philippine legal system.

a. Initially for popularizing the Public Information Media (NMPC) now ve gave partial undation too	Office of the Director Staff	1. Workshop on Popularizing the Law via Mass Media – the laws to be disseminated were identified and prioritized. 2. An ongoing radio program "Ito ang Ating Batas" over VOJ 918 Khz AM, Monday to Friday, from 5:45 – 6:00 a.m. 3. Regular press releases.	A. Development of a m[illegible] campaign strategy on a two-[illegible] basis: 1) Initial phase – increasing level of awareness of target audiences. 2) Sustaining phase-institutionalizing mass media program. B. Honoraria for legal lecturers and technical staff.	[illegible]ce cassette tapes, comic- and video cassette tapes.	
(VTR) equip- a Foundation	DCLE for BLES. Office of the Director for Practical Law.	1. Seminar reports on BLES and Practical Law. 2. Readability study for BLES primers.	Task force and corresponding administrative support.	Evaluation study of various aspects of the program. For aspects just beginning, gathering of baseline data on awareness and functional literacy about the law and behavioral change. Setup a continuing mechanism for the above.	

ibraries, Legal ther agencies	As need arises.	Projected outputs are the following: 1. learning kits, i.e. comics 2. primers 3. folk media (indigenous forms of communication, i.e. puppets, *duplo, balagtasan, zarzuela* and the like) 4. anecdotes	1. Manpower and financial resources for the following: a) development and publication of learning kits, anecdotes, primers and the like. b) production of folk media (indigenous forms of communication, i.e. puppets, *duplo, balagtasan, zarzuela* and the like).	Develop expertise in popular education including informal education. This should include training of personnel locally and in relevant programs abroad. Set up in IBP libraries special section for "Popularizing the Law" materials open to general public (as distinguished from legal professionals).	
SED ision of Continuing Legal Education angay Legal Education Seminar egrated Bar of the Philippines ncy for International Development istry of Public Information tional Media Production Center o Tape Recorder					

ACTIVITIES					
1. Barangay Legal Education Seminars (BLES)					
					3. Practical Law
					2. BLES echo seminars

		5. To establish a forum where law professionals, community resource persons, teachers and students can have meaningful dialogues on various aspects of practical law.			
4. Legal Education through Mass Media	A continuing legal education program utilizing all forms of mass media in cooperation with the Office of Media Affairs and other communication agencies and to disseminate legal information to a wider-based audience.	1. To increase level of awareness of target audiences towards institutionalizing the program in the future. 2. To provide support to other activities on popularizing the law.	*The general public (non-lawyers)* *The grassroots groups* *Specialized groups*	Implemented by the Office of the Director	U.P. Law Center fund the Workshop on Po Law, the Ministry of mation (MPI) and N Productions Center Office of Media Affa funding. The Asia Fo gave partial assistance. Video Tape Recorder ment bought with As grant.
5. Research	A "task force" which will periodically assess, monitor and evaluate all popularizing the law projects as specified according to the needs of the different programs.	1. To conduct macro and micro studies for decision-makers to improve program and plan spin-off activities such as the preparation of a glossary of legal terms and phrases in English and Pilipino. 2. To assist local groups by providing them needed data and help conduct their own level of inquiry. 3. To gather baseline information on levels of public awareness of the legal system. 4. On the basis of No. 3, to integrate information in policy and law reform projects.	*Target audiences of all popularizing the law activities* *Sponsoring agencies* *Lecturers and Staff* Inter-agency linkages	At present, research is conducted on BLES and Practical Law on a limited dimension.	None yet
6. Legal Resources for Popularizing the Law	An overall project to integrate and systematize the development, production, creation, dissemination and gathering of legal resources useful for all components in popularizing the law projects.	1. To encourage the creation of materials on the law suitable for the various programs in popularizing the law. 2. To support inter-disciplinary and inter-agency efforts in all aspects of the program, i.e. lawyers, teachers, social scientists. 3. To maximize the limited resources so that materials can be used interchangeably at all levels of the program. 4. To encourage all libraries, particularly law school libraries in the country to include a systematic collection of popularizing the law materials. 5. To simplify and translate legal documents and information for popular use.		To be implemented by the Legal Resources Center and a mass communication specialist.	Possibly tap IBP L Resources Center, and university units.

Prepared by:

Dr. Purificacion V. Quisumbing
Ms. Theresa Alma Malinis

ABBREVIATIONS U

DCLE – Div
BLES – Bar
IBP – Int
AID – Ag
MPI – Mi
NMPC – Na
VTR – Vi

ASEAN DOCUMENTS

AGREEMENT ON THE ASEAN FOOD SECURITY RESERVE

THE GOVERNMENTS OF THE REPUBLIC OF INDONESIA, MALAYSIA, THE REPUBLIC OF THE PHILIPPINES, THE REPUBLIC OF SINGAPORE AND THE KINGDOM OF THAILAND, being members of the Association of South East Asian Nations, which Association shall hereinafter be referred to as ASEAN;

Recalling the Declaration of ASEAN Concord signed in Bali, Indonesia, on 24 February 1976, which provides that ASEAN Member Countries shall take cooperative action in their national and regional development programmes;

Noting the high vulnerability of the region to wide fluctuations in the production of basic foodstuffs and hence to instability of the region's food supply;

Noting further that the assurance of food security in the ASEAN region is the common responsibility of the ASEAN Member Countries;

Emphasizing that the establishment of a food security reserve among ASEAN Member Countries based on the principle of collective self-reliance will contribute to the strengthening of the respective national economic resilience as well as to ASEAN economic resilience and ASEAN solidarity;

Affirming the need for effective and concerted action by ASEAN Member Countries aimed at strengthening food security in the region;

Have Agreed on the following provisions:

ARTICLE I
General Provisions

The ASEAN Member Countries hereby agree that food security needs to be dealt with from several aspects, especially, where appropriate, through:

(i) the strengthening of the food production base of the ASEAN Member Countries;
(ii) the prevention of post harvest losses of food grains;
(iii) the establishment of a food information and early warning system;
(iv) the adoption of effective national stock holding policies and improved arrangements for meeting requirements of emergency food supplies;
(v) the promotion of stability of food prices;
(vi) the adoption of policies and programmes for improving consumption and nutrition, particularly of the vulnerable groups within each ASEAN Member Country;

(vii) the promotion of labour opportunities especially in the rural areas and increasing the income particularly of the small farmers; and

(viii) other measures, including possible long-term trade arrangements.

ARTICLE II
Establishment of the ASEAN Food Security Reserve

1. The Governments of the ASEAN Member Countries hereby agree to establish the ASEAN Food Security Reserve.

2. The term "ASEAN Food Security Reserve" shall mean the sum total of the basic food stocks, particularly rice, maintained by each ASEAN Member Country within its national borders as a matter of national policy which includes commitment to the ASEAN Emergency Rice Reserve.

ARTICLE III
Coordination of National Food Stock Policies and of National Food Reserve

1. The Governments of the ASEAN Member Countries shall coordinate in conformity with their institutional and constitutional requirements, national food stock policies which take into account the policies of other ASEAN Member Countries and which together will result in maintaining a minimum safe level for the ASEAN Food Security Reserve.

2. It is hereby understood that the establishment of the ASEAN Food Security Reserve is not intended to fill continuing food deficits of individual ASEAN Member Countries, which normally are met through imports, commercial as well as concessional. The elimination of such deficits should, where appropriate, be attempted through increased production at an accelerated rate.

3. The ASEAN Member Countries shall further take measures aimed at assuring that their national food reserves are replenished as soon as feasible whenever they have fallen below such minimum levels as may be specified.

ARTICLE IV
The ASEAN Emergency Rice Reserve

1. The Governments of the ASEAN Member Countries do hereby agree to the establishment of the ASEAN Emergency Rice Reserve for the purpose of meeting emergency requirements.

2. Each ASEAN Member Country shall earmark within or over and above its national reserve, a certain quantity of rice. Such earmarked quantities of rice shall constitute the ASEAN Emergency Rice Reserve, the total amount of which shall initially be 50,000 metric tons of rice.

3. For the first year of operation ASEAN Member Countries agree that the earmarked quantity of each ASEAN Member Country for the ASEAN Emergency Rice Reserve shall be as follows:

Indonesia	:	12,000 metric tons
Malaysia	:	6,000 metric tons
Philippines	:	12,000 metric tons
Singapore	:	5,000 metric tons
Thailand	:	15,000 metric tons

4. Both the total amount of the ASEAN Emergency Rice Reserve, as well as the

amount earmarked by each ASEAN Member Country in such Reserve, shall be periodically reviewed by the Governments of the ASEAN Member Countries taking into account the general food situation in the ASEAN region and in the world.

5. An emergency as referred to in Paragraph 1 of this Article shall be understood to mean the state or condition in which an ASEAN Member Country, having suffered extreme and unexpected natural or man-induced calamity, is unable to cope with such state or condition through its national reserve and is unable to procure the needed supply through normal trade.

ARTICLE V
Release of Rice from the ASEAN Emergency Rice Reserve for Emergency Requirements

With regard to the release of rice from the ASEAN Emergency Rice Reserve to meet the emergency requirement of any ASEAN Member Country, the following procedure shall be adopted:

(i) The ASEAN Member Country in need shall directly notify the other ASEAN Member Country or Countries of the emergency it is facing and the amount of rice required.

(ii) The other ASEAN Member Country or Countries on being requested shall take immediate steps to make the necessary arrangements to ensure immediate and speedy release of the required rice.

(iii) The prices, terms and conditions of payments in kind or otherwise, in respect of rice so released, shall be the subject of direct negotiations between the ASEAN Member Countries concerned.

(iv) The requesting ASEAN Member Country shall at the same time inform the ASEAN Food Security Reserve Board of its request to the other ASEAN Member Country or Countries.

ARTICLE VI
Replenishment of the ASEAN Emergency Rice Reserve

1. The ASEAN Member Countries which have released rice under Article V either to meet their own emergency requirements or the emergency requirements of other ASEAN Member Countries shall take steps to replenish the rice so released so that the earmarked quantity of the countries concerned shall be restored to the level indicated in Article IV.

2. Fulfillment of the responsibility under Paragraph 1 of this Article shall be subject to the constraints on the availability of supply as well as other limitations.

ARTICLE VII
Food Information and Early Warning System

1. For the effective functioning of the undertakings contained in Article III and IV, the Government of ASEAN Member Countries agree to furnish to the ASEAN Food Security Reserve Board, referred to in Article VIII, on a regular basis information on government stockholding policies and programmes, as well as other aspects of the food supply and demand situation, in particular rice. The ASEAN Food Security Reserve Board shall circulate the said information to the Member Countries.

2. On the basis of such data collected, concise factual appraisals of the situation and outlook shall be prepared periodically and circulated to ASEAN Member Countries.

3. The information or data made available pursuant to this Article shall be treated as confidential.

ARTICLE VIII
ASEAN Food Security Reserve Board

1. For the purpose of providing supervision and coordination in the implementation of the ASEAN Food Security Reserve, the Governments of ASEAN Member Countries hereby agree to establish an ASEAN Food Security Reserve Board, hereinafter referred to as "the Board".

2. The Board shall be composed of one representative from each ASEAN Member Country.

3. The Board's terms of reference shall be as in the Annex to this Agreement.

ARTICLE IX
Final Provisions

1. This Agreement is subject to ratification by the ASEAN Member Countries.

2. The Instruments of Ratification shall be deposited with the Secretary General of the ASEAN Secretariat who shall promptly inform each ASEAN Member Country of such deposit.

3. This Agreement shall enter into force on the thirtieth day after the deposit of the fifth Instrument of Ratification.

4. This Agreement may not be signed with reservation nor shall reservations be admitted at the time of ratification.

5. Any amendment to the provisions of this Agreement shall be effected by consent of all ASEAN Member Countries.

6. This Agreement shall be deposited with the Secretary General of the ASEAN Secretariat who shall promptly furnish a certified copy thereof to each ASEAN Member Country.

In Witness Whereof, the undersigned being duly authorized thereto by their respective Governments have signed this Agreement.

Done at the City of New York, U.S.A. this 4th day of October 1979 in six copies in the English language.

For the Government of the Republic of Indonesia	(Sgd.) **Mochtar Kusumaatmadja** *Minister for Foreign Affairs*
For the Government of Malaysia	(Sgd.) **Tengku Ahmad Rithauddeen** *Minister of Foreign Affairs*
For the Government of the Republic of the Philippines	(Sgd.) **Carlos P. Romulo** *Minister for Foreign Affairs*
For the Government of the Republic of Singapore	(Sgd.) **S. Rajaratnam** *Minister for Foreign Affairs*
For the Government of the Kingdom of Thailand	(Sgd.) **Upadit Pachatiyangkun** *Minister of Foreign Affairs*

Annex

Terms of Reference of the ASEAN Food Security Reserve Board

1. To coordinate periodic exchanges of information on national food policies, and stocking policies as well as production, consumption and storage programmes pertaining to basic food commodities, particularly rice, among the ASEAN Member Countries.

2. To undertake a periodic evaluation of the food situation and prospects in the ASEAN region as well as worldwide, including production, consumption, trade, prices, quality and stocks of basic food commodities, particularly rice. These periodic evaluation reports shall be disseminated to the ASEAN Member Countries.

3. To examine immediate, short term and long term policy actions as may be considered necessary to assure adequate supplies of basic food commodities particularly rice, and to submit on the basis of such examination recommendations for appropriate action to the Governments concerned.

4. To review periodically the size of the ASEAN Emergency Rice Reserves and to work out acceptable criteria for determining the contributions of each ASEAN Member Country to such Emergency Rice Reserve and recommend appropriate action to the ASEAN Member Countries concerned.

5. To work out immediately procedures for the payments of rice released under emergency situations taking into consideration Article V (iii) of the Agreement and prevailing market practices whenever deemed necessary.

6. To review the implementation of the provisions of the Agreement on the ASEAN Food Security Reserve.

7. To be responsible to the ASEAN Committee on Food, Agriculture and Forestry (COFAF) and to submit thereto reports on its activities.

AGREEMENT ESTABLISHING THE ASEAN PROMOTION CENTRE ON TRADE, INVESTMENT AND TOURISM

Japan and the member countries of the Association of South East Asian Nations (hereinafter referred to as the "ASEAN member countries") comprising the Republic of Indonesia, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Kingdom of Thailand;

Recognising the vital importance of promoting an increase in exports, flow of investment and tourism in the economic development of the ASEAN member countries;

Convinced that cooperative efforts are necessary to achieve such objectives effectively and that such efforts contribute to the promotion of friendly relations between Japan and the ASEAN member countries;

Have agreed as follows:

ARTICLE I
Establishment

1. There shall be established a promotion centre on trade, investment and tourism known as the ASEAN Promotion Centre on Trade, Investment and Tourism (hereinafter referred to as "the Centre").

2. The Headquarters of the Centre shall be located in Tokyo.

ARTICLE II
Purpose

The purpose of the Centre is to promote exports from the ASEAN member countries to Japan, particularly semi-processed and manufactured products; to accelerate the inflow of investment from Japan to the ASEAN member countries through close cooperation between Japan and the ASEAN member countries.

ARTICLE III
Activities

To achieve its purpose, the Centre shall undertake the following activities:

(a) to introduce and publicize in Japan, products industries and investment opportunities and tourism resources of the ASEAN member countries;

(b) to manage the permanent ASEAN Trade, Investment and Tourism Exhibition Hall within the framework of the Centre;

(c) to assist and advise, where appropriate, missions from and to the ASEAN member countries on trade, investment and tourism which will enhance the interest of the ASEAN member countries;
(d) to serve as a channel for the meaningful exchange of information relevant to the enhancement of trade, investment and tourism of the ASEAN member countries including rules and regulations concerning market access, as well as to prepare and analyse data and information, and trends on market;
(e) to conduct researches and studies on trade, investment and tourism;
(f) to provide Members and, as appropriate, related organizations and persons with information on trade, investment and tourism including those mentioned in subparagraph (d) above, as well as the results of researches and studies by the Centre;
(g) to facilitate, whenever necessary, technical cooperation including transfer of technology related to trade, investment and tourism;
(h) to maintain close cooperation in the fields of trade, investment and tourism with the Governments of the Members and relevant regional and international organizations; and
(i) to undertake such other activities as may be deemed necessary to achieve the purpose of the Centre.

ARTICLE IV
Membership

Japan and the ASEAN member countries shall become Members of the Centre (referred to in this Agreement as "Member" or "Members") by becoming parties to this Agreement in accordance with Article XXII.

ARTICLE V
Organization

The Centre shall have a Council, an Executive Board and a Secretariat.

ARTICLE VI
Council

1. The Council shall consist of Directors. Each Member shall appoint one Director who shall represent such Member on the Council.

2. The Council shall designate one of the Directors as Chairman. The Chairman shall hold office for a term of one year.

3. The Chairman and the Secretary General shall not be nationals of the same Member.

4. The Council shall be the supreme organ of the Centre and exercise, in addition to the powers and functions specified in other provisions of this Agreement, the powers and functions to:

(a) decide on the plan of operation and work programme concerning the operation of the Centre;
(b) approve the annual work programme and the budget of revenues and expenditures of the Centre within the framework of the plan of operation and work programme;
(c) approve the annual report on the operation of the Centre;
(d) appoint the Secretary General;
(e) assign special functions to the Chairman;

(f) determine the powers and functions to be entrusted to the Executive Board;
(g) approve the terms and conditions for appointment of the Secretary General;
(h) approve the acceptance of assistance referred to in Article X, paragraph 3;
(i) consider and adopt amendments to this Agreement in accordance with the provisions of Article XXI, paragraphs 1 and 2;
(j) decide on the disposal of the property and assets of the Centre in case of the dissolution of the Centre, and on any other matters connected with the dissolution;
(k) adopt its own rules of procedures; and
(l) decide on and/or approve other important matters concerning the Centre.

5. The Council shall hold an annual meeting and such other meetings as may be decided by the Council. The Council shall also hold a meeting whenever called by the Secretary General with the approval of the Chairman of the Council or at the request of a majority of the Directors.

6. All the decisions of the Council shall be made by consensus.

ARTICLE VII
Executive Board

1. The Executive Board shall consist of representatives appointed by Members. Each Member shall appoint one representative.

2. The Executive Board shall elect its own Chairman.

3. In order to ensure an effective operation of the Centre, the Executive Board shall supervise the activities of the Secretariat so that the decisions of the Council are effectively implemented and shall exercise, in addition to the powers and functions specified in other provisions of this Agreement, such powers and functions as may be entrusted to it by the Council. The Executive Board may advise the Secretary General as it may deem necessary.

4. The Executive Board shall report to the Council.

5. The Executive Board shall meet regularly or at any time as may be necessary.

6. The Executive Board may establish, when necessary, ad-hoc committees on matters in various fields which fall within the purview of its powers and functions.

7. All the decisions of the Executive Board shall be made by consensus.

ARTICLE VIII
Secretariat

1. The Secretariat shall consist of a Secretary General and such staff as the Centre may require, who shall be nationals of Members.

2. The Secretary General shall represent the Centre as its chief executive and shall be responsible to the Council and the Executive Board.

3. The term of office of the Secretary General shall be three years and he may be reappointed. He shall, however, cease to hold office when the Council so decides.

4. The Secretary General shall, in addition to exercising the powers assigned to him expressed by this Agreement, execute the annual work programme and the annual budget and implement the decisions of the Council, under the supervision and advice of the Executive Board.

5. The Secretary General shall prepare, *inter alia*, the draft annual work programme, the annual budget estimates and the annual report, and present them for approval to the annual meeting of the Council.

6. The senior staff of the Secretariat shall be appointed by the Council on the recommendation of the Executive Board. The nomination for the senior staff shall be made by the Secretary General. Other personnel of the Secretariat shall be appointed by the Secretary General.

7. The terms and conditions of employment of the members of the senior staff and other personnel shall be set out in staff regulations approved by the Council.

ARTICLE IX
Official Language

The official language of the Centre shall be English.

ARTICLE X
Finance

1. Members shall contribute to the Centre, in accordance with the respective national laws and regulations, an agreed amount of money necessary for the operation of the Centre.

2. Except for the rent of the permanent ASEAN Trade, Investment and Tourism Exhibition Hall, which shall be born by Japan, the annual budget of the Centre shall be met in the following proportion: Japan: 90 per cent, the ASEAN member countries: 10 per cent.

3. The Centre may, with the approval of the Council, accept assistance on a grant basis from non-Member countries and organizations.

ARTICLE XI
Juridical Personality

The Centre shall possess juridical personality. It shall have the capacity:

(a) to contract;
(b) to acquire and dispose of movable and immovable property; and
(c) to institute legal proceedings.

ARTICLE XII
Privileges and Immunities

1. The Centre and the persons related to the activities of the Centre shall enjoy, in the territory of the country where the Headquarters of the Centre is located (hereinafter referred to as "the Host Country"), privileges and immunities in accordance with the provisions of Article XIII to XIX.

2. (a) For the furtherance of the purpose of this Agreement, the Centre may conclude, with one or more Members other than the Host Country, agreements on privileges and immunities which shall be approved by the Council.
(b) Pending the conclusion of such agreements, Members shall grant, to the extent consistent with the respective national laws and regulations, such privileges and immunities as may be necessary for the proper operation of the Centre.

ARTICLE XIII
Privileges and Immunities on Property, Funds and Assets

1. The Centre, its property and assets shall enjoy immunity from proceedings in the courts except in so far as in any particular case it has expressly waived its immunity in respect of the execution of judgement.

The provisions of this paragraph shall not apply in case of civil proceedings, related disputes arising out of contracts, and out of damage caused by a vehicle.

2. The archives of the Centre and in general all official papers and documents belonging to private papers of the officials of the Secretariat shall be held in a place entirely separate from the place where the official papers and documents are held.

3. Without being restricted by financial control, regulations or moratoria of any kind,

(a) the Centre may hold funds or currency of any kind and operate accounts in any currency;

(b) the Centre may freely transfer its funds or currency from or to the Host Country, or within the territory of the Host Country, and convert any currency held by it into any other currency.

4. In exercising the right as provided for in paragraph 3 above, the Centre shall comply with the formalities laid down in national laws of the Host Country and shall pay due regard to any representations made by the Host Country in so far as it is considered that effect can be given to such representations without detriment to the interests of the Centre.

5. The Centre, its assets, income and other property shall be:

(a) exempt from all direct taxes except those which are, in fact, no more than charges for public utility services;

(b) exempt from customs duties and from prohibitions and restrictions on imports and exports in respect of articles imported or exported by the Centre for its official use; it is understood, however, that articles imported under such exemption shall not be sold in the Host Country except under conditions agreed upon with the Host Country;

(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of the publications imported or exported by the Centre for its official use.

6. While the Centre will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Centre is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Host Country shall whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

ARTICLE XIV
Duty-Free Entry and Other Facilities to Products for Promotion

The Host Country shall, in accordance with its relevant laws and regulations, give duty-free entry and every facility and assistance in the import of goods and materials of the ASEAN member countries for promotional display and, where appropriate, for subsequent distribution of such goods and materials as free samples. The Host Country shall also, in accordance with its relevant laws and regulations, give every facility and assistance in the subsequent sales of such goods and materials.

ARTICLE XV
Facilities in Respect of Communications

In respect of its official communications, the Centre shall, in the territory of the Host Country and in so far as may be compatible with any international conventions, regulations and arrangements to which the Host Country is a party, enjoy treatment not less favourable than that accorded by the Host Country to any other interna-

tional organization, in the matter of priorities, rates and taxes for post and telecommunications.

ARTICLE XVI

Privileges and Immunities of the Officials of the Secretariat

1. The officials of the Secretariat shall:
   (a) be exempt from taxation on the salaries and emoluments paid to them by the Centre;
   (b) be immune, together with their spouses and relatives dependent on them, from immigration restrictions, alien registration and national service obligations;
   (c) have the right to import free of duty furniture and effects for the use of themselves and their families at the time of first taking up their post at the Centre;
   (d) be accorded in respect of exchange facilities treatment not less favourable than that accorded to officials of comparable rank of any other international organizations.

2. The Host Country may not apply the provisions of paragraph 1 of this Article to officials who are nationals of or ordinarily resident in the Host Country.

3. Privileges and immunities are accorded to officials in the interests of the Centre only and not for their personal benefit. Consequently, the Executive Board upon the recommendation by the Secretary General, has the right and duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede realisation of justice and can be waived without prejudice to the interests of the Centre. The Council of the Centre has the right and duty to waive the immunity accorded to the Secretary General.

4. The officials of the Secretariat to which the provisions of this Article shall apply shall be the Secretary General, senior officials and other officials categories of which shall be determined by the Council. The Secretary General shall notify the Members of the names and addresses of those officials.

ARTICLE XVII

Entry Facilities

1. The Host Country shall facilitate the entry of the following persons into its territory where they are visiting on their official missions;
   (a) Directors and representatives of the other Members participating in the meetings prescribed in Articles VI and VII together with their spouses;
   (b) the Secretary General and other officials of the Secretariat together with their spouses and relatives dependent on them;
   (c) other persons invited by the Centre

2. The provisions of paragraph 1 above does not mean that the entrants mentioned in that paragraph are exempted from complying with national laws of the Host Country relating to entry matters.

ARTICLE XVIII

Abuse of Privleges

1. The Centre shall cooperate at all times with the appropriate authorities of the Host Country to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities conferred by this Agreement.

2. If the Host Country considers that there has been an abuse of a privilege or immunity conferred by this Agreement, consultations shall be held between the

Host Country and the Centre to determine whether any such abuse has occurred and, if so, to ensure that no repetition of such abuse occurs.

ARTICLE XIX
Settlement of Disputes

The Centre shall make provisions for appropriate modes of settlement of:

(a) disputes of a private law character to which the Centre is a party other than those referred to in Article XIII, paragraph 1; and

(b) disputes involving any official of the Secretariat who enjoys immunity under the provisions of this Agreement, if immunity has not been waived in accordance with Article XVI, paragraph 3.

ARTICLE XX
Withdrawal

1. Any Member may at any time withdraw from this Agreement by giving notice in writing to that effect to the Depository Authorities.

2. Upon receiving such a notice, the Depository Authorities shall inform the Members thereof.

3. The Member shall cease to be a party to this Agreement at the end of the fiscal year of the Centre in which such notification is made. Such withdrawal shall not affect the financial obligations of that Member outstanding at the time when its withdrawal takes effect.

ARTICLE XXI
Amendments

1. Any Member may propose amendments to this Agreement. A proposed amendment shall be communicated to the Secretary General who shall communicate it to the other Members at least six months in advance of the consideration by the Council.

2. Amendments to this Agreement shall come into force upon the adoption by the Council. However, the amendments involving following matters shall require subsequent acceptance by all Members before they come into force:

(a) fundamental alteration in the purpose or the functions of the Center;

(b) change relating to the right to withdraw from this Agreement;

(c) introduction of new obligations for Members;

(d) change in the provisions regarding privileges and immunities of the Centre and the persons related to the activities of the Centre; and

(e) other matters determined by the Council as important.

3. Acceptance by the Members of amendments to this Agreement shall be effected by the deposit of instruments of acceptance with the Depository Authorities.

ARTICLE XXII
Signature, Ratification and Acceptance

1. This Agreement shall be open for signature by Japan and the ASEAN member countries. It shall be subject to ratification or acceptance by the Signatories.

2. Instruments of ratification and acceptance shall be deposited with the Government of Japan and the ASEAN Secretariat, which are hereby designated as Depository Authorities.

ARTICLE XXIII

Entry into Force

This agreement shall enter into force on the date on which Japan and all the ASEAN member countries have deposited instruments of ratification or acceptance.

ARTICLE XXIV

Duration

This Agreement shall remain in force for five years, and thereafter may be extended for additional fixed periods by decision of the Council.

ARTICLE XXV

Deposit

This Agreement shall be deposited with the Depository Authorities which shall send certified copies thereof to Japan and the ASEAN member countries.

In witness whereof the undersigned representatives being duly authorized thereto, have signed the present Agreement.

Done at Tokyo, in duplicate, in the English language, this twenty-second day of December, one thousand nine hundred and eighty.

For the Government of Indonesia	(Sgd.) **Mochtar Kusumaatmadja** *Minister for Foreign Affairs*
For the Government of Japan	(Sgd.) **Masayoshi Ito** *Minister for Foreign Affairs*
For the Government of Malaysia	(Sgd.) **Tengku Ahmad Rithauddeen** *Minister for Foreign Affairs*
For the Republic of the Philippines	(Sgd.) **Carlos P. Romulo** *Minister for Foreign Affairs*
For the Republic of Singapore	(Sgd.) **S. Rajaratnam** *Minister for Foreign Affairs*
For the Kingdom of Thailand	(Sgd.) **Upadit Pachariyangkun** *Minister for Foreign Affairs*

ASEAN BOOK NOTICES

Myrna S. Feliciano

Anand, R.P. & Quisumbing, P.V., eds. ASEAN Identity, Development and Culture. Quezon City, U.P. Law Center and East-West Center Culture Learning Institute, 1981. 411p. P80.00/$18.00.

This book contains, in a somewhat revised form, the papers presented at a Workshop-Seminar held in Manila, June 2 to 7, 1980 under the joint sponsorship of the Culture Learning Institute of the East-West Center at Honolulu (Hawaii), and the University of the Philippines Law Center.

Established in 1967, ASEAN (Association of Southeast Asian Nations) has been receiving increasing attention and recognition throughout the world as a vigorous and growing organization. Bound together by "ties of history and culture" and "convinced of the need to strengthen further and existing bonds of regional solidarity and cooperation," the five countries of Southeast Asia – Indonesia, Malaysia, Philippines, Singapore and Thailand – have joined hands together "to accelerate the economic growth, social progress and cultural development in the region" and "to promote active collaboration and mutual assistance... in economic, social, cultural, technical, scientific and administrative fields." It was to analyse, understand and evaluate these developments in this dynamic treaty region that the above-mentioned Seminar was organized. Besides five members of an inter-disciplinary, multi-cultural team of the Culture Learning Institute working on a research project on Cultural Developments in the ASEAN Region, thirty scholars from eight countries were invited to participate in the Seminar and discuss multifarious developments in the organization from various standpoints – history, sociology, politics, law, economics, and science and technology. Since all these facets of development needed to be looked into, experts from various disciplines were included in order to

make it, as far as possible, a multi-disciplinary, multi-cultural study of the emerging cultural identity in Southeast Asia.

Chong Li Choy. Open Self-Reliant Regionalism; Power for ASEAN's Development. Singapore, Institute of Southeast Asian Studies, 1982. 88p S$12.50/U.S.$5.00

This book is addressed to the problem of Southeast Asia's powerlessness in relation to control over developmental resources. Based on a discussion of previous conceptions and the reality of the relationship between development and international relations in Southeast Asia today, a theory of international power and relations which determines resource allocation and hence developmental capacity, is evolved. Unlike the conception of power in other theories, this theory differentiates between two generic types of power: systematic power which is based on dependence implied in the system of international relations, and asystematic power, which is based on various attributes of nations. From this theory, the strategy of open self-reliant regionalism is developed and applied to ASEAN. This strategy manipulates international balances of power and dependence in order to benefit ASEAN. Through the application of this strategy, ASEAN countries may be able to obtain the capacity to control more developmental resources and consequently to apply them for their own development.

Danusaputro, St. Munadjat. The Marine Environment of Southeast Asia. Bandung, Binacipta Publishing Company, 1981. 325p. Rp 5300

This essay constitutes the third book dealing with "Asian-African Identity in World Affairs – Its Impact and Prospects for the Future", the theme of the 21st Regular Session of the Asian-African Legal Consultative Committee (AALCC) in conjunction with the celebration of the 25th Anniversary of the Asian-African Conference 1955 (Bandung Conference) held 24-30 April 1980 at Bandung and Jakarta.

St. Munadjat Danusaputro, Professor of Environmental Law at the Universities of Padjadjaran and Diponegoro has divided his work into five parts, namely: Part 1: Southeast Asia at the Cross-Roads of the World; Part 2: Problems of Ocean Management in South-East Asia – the Elements of Environmental Policy and Navigation Scheme for South-East Asia; Part 3: IMCO Resolution A-375 (X) – Navigation Through the Straits of Malacca and Singapore; Part 4: Problems of

Ocean Management in South-East Asia – The Sub-regional Arrangement on Prevention and Control of Marine Polution in the Celebes (Sulawesi) Sea; and Part 5: ASEAN Seas Action Plan Within the East Asian Regional Seas Programme.

The author hopes that with the birth of the ASEAN Law Association, lawyers of the five ASEAN member countries will provide the necessary legal component in the implementation of an ASEAN Regional Seas Programme.

Moreno, Federico B. Philippine Law Dictionary. 2d ed. Quezon City, Vera-Reyes, Inc., 1982. 667p. P200

For the past 80 years in the Philippines, the lawyer and other professionals, the merchant and other men in business, the scholar and other disciples of learning have been turning to foreign standard and law dictionaries for the meaning of words and phrases used in statutes and regulations, in contracts and other legal documents, in pleadings and papers, in court decisions and administrative rulings.

While in some cases the common and ordinary meaning given by such lexicographers sufficed, in many instances it became necessary to investigate and ascertain whether the word or phrase had taken on a particular sense or significance in Philippine law, especially if the term was of local origin, invention or adaptation. Here at last is a law dictionary which contains words and phrases legally and judicially defined and accepted, with specific citations of local source authorities, thus insuring favorable reception of their meaning in Philippine courts and other government agencies.

This work furnishes the meaning of English, Spanish, Filipino and Latin maxims and expressions in law, whenever the same have been accepted and/or defined by Philippine Courts. It is the only indigenous law dictionary written in English in all Asia.

Simorangkir, J.C.T. and Mang Reng Say, B. Around and About the Indonesian Constitution of 1945. Jakarta, Penerbit Djambatan, 1980. 131p. Rp 1000

This is the nineteenth edition of this concise reference book which is centered on the Indonesian Constitution of 1945. According to the authors, the book which originally focused on the establishment of the

Constitution is now centered on the reality of the Constitution because of the Decree of the President of the Republic of Indonesia of July 5, 1959. It also incorporates several additions which have been made as a result of development of the times such as the establishment of the Broad Outlines of State Policy in March, 1978 by the General Session of the People's Consultative Assembly and the election of the President and Vice-President of the Republic of Indonesia. To understand the meaning of each constitutional provision, it is usually followed by an elucidation and an annotation which may either be a brief history or the basis of the provision.

Tangsubkul, Phiphat. ASEAN and the Law of the Sea. Singapore, Institute of Southeast Asian Studies, 1982. 152p. S$24.00/US$12.00

An important contribution in the dearth of literature on ASEAN and the Law of the Sea, this book is the result of extensive research by Dr. Tangsubkul, an international law specialist. The contents are divided into two broad areas. The first section on the evolution of the geo-juridical nature of ocean space appropriation by coastal states and ASEAN states covers: Claims of ASEAN states relating to the Law of the Sea: a historical survey; Individual approaches and claims of ASEAN countries on the emerging trends in the Law of the Sea; The special problems of passage through archipelagic waters and straits used for international navigation. The second section on problems relating to jurisdiction and rights over living and non-living resources of ASEAN countries covers: Fishery development in individual ASEAN countries; Problems of ASEAN *vis-a-vis* fishing resources; Status of development of petroleum and gas in individual ASEAN states; Law and practice relating to the jurisdiction and rights over non-living resources in ocean areas adjacent to ASEAN states; Problems and potential conflict involving off-shore exploration and exploitation of oil and gas.