Editorial

In the last number of our REVIEW we published a short article on Uruguay which provoked some strong reactions. Unfortunately, owing to the delay in publication of the Spanish edition, the full text of the article was not available in Spanish in Latin America. Instead a shortened, and in some important respects inaccurate, account of it distributed by one of the press agencies was published in a number of Latin American newspapers.

Dr. Hector Gros Espiell, the Representative of Uruguay to the U.N. in Geneva, replied to our article in a letter to the Commission dated July 28, which he also released to the press in Uruguay. A shortened version of this reply, as agreed with Dr. Espiell, appears at the end of this editorial.

A large part of the reply is devoted to establishing that the measures taken to counter the guerrilla movement were in accordance with the Uruguayan Constitution. Our article did not suggest otherwise, though many important Uruguayan jurists have done so, including Dr. Alberto Ramon Real, Professor of Constitutional Law and Dean of the Faculty of Law at the University of Uruguay.

We do not propose to publish a detailed answer to Dr. Gros Espiell's letter, since the letter contained an invitation from the Government of Uruguay to the International Commission of Jurists to send an impartial mission to Uruguay to ascertain the truth. The Commission has responded to this invitation, suggesting terms of reference and procedures, and the Commission is now awaiting confirmation from the Government that these suggestions are acceptable. The problem of terrorism and the Rule of Law is a world-wide one, and we believe that a careful impartial study of the problem in Uruguay would be of great value.

We would only make two comments upon Dr. Gros Espiell's letter. Firstly, we did not suggest in any way that the lawful use of force by the authorities is to be equated with illegal violence. Secondly, we did not suggest that the Government of Uruguay have authorised the use of torture. However, we are not alone in suggesting that there has been illegal use of torture against suspects in Uruguay.

We regret that the newspaper report of our article also led Dr. Sebastian Soler, the greatly respected professor of penal law in Argentina, to resign from the Commission and to announce his resignation to the press.. Dr. Soler has been asked to reconsider his decision in the light of the explanations he has been given and the publication in this issue of the Uruguayan Government's reply. As a result of the publicity given to Dr. Soler's resignation, we have received many messages of support from jurists in Uruguay and Argentina.

Dr. Hector Gros Espiell's reply for the Uruguay government:

The pattern, which your REVIEW describes as 'typical', of a government seeking to maintain order and the authority of the state at the expense of its fundamental liberties and finding itself in a more and more disturbed situation as its fundamental liberties disappear, is not to be found in Uruguay.

On the contrary, the situation has been and remains quite different. Totalitarian and anti-democratic subversion, seeking to destroy the constitutional system of the Republic by violence, appeared in a state where the full exercise of fundamental rights was a reality forming part of the very life of the country.

The country reacted only slowly to this terrorist offensive, which constituted a new and inexplicable phenomenon in Uruguay. Public opinion did not readily understand why an urban guerilla movement broke out precisely in a state where the law was respected and—subject to the limitations of all things human—was a model from the democratic and social point of view. People did not understand, at first, that what made the country such an attractive target for seditious elements was precisely the attachment of Uruguay to democracy and liberty, as well as the social progress obtained as a result of the peaceful revolutionary experiment which started at the beginning of the century.

The first decisions of a defensive nature taken by the Government were limited to the adoption of 'urgent security measures' envisaged and provided for by the Constitution of the Republic (Article 168, para 17) and which could be terminated either by the General Assembly or by the Permanent Commission. It was necessary to have recourse to these security measures for a long period and to give them at times a content which was novel in the theory of Uruguayan constitutional law.

Given the increase in subversive measures (assassination of a foreigner, kidnapping of diplomats and persons holding official positions, etc.) it was seen to be necessary to go a step further while still remaining within the framework of the Constitution. By virtue of Article 31 of the Constitution, since the necessary elements to constitute a 'conspiracy against the country' were present, it was decided to suspend the guarantee of individual security for a period determined in advance, with the authorization of the General Assembly or the Permanent Commission.

Since a real state of war existed, as was shown by the use by seditious groups of homicidal violence in its most extreme forms, a 'state of internal war' had to be proclaimed with the approval of parliament under Article 253 of the Constitution, and Article 31 of the Constitution was applied, so as to make possible sure, speedy and effective countermeasures, by giving specific powers to the armed forces to combat subversion (under the decree of 9 September 1971).

Finally, the promulgation on July 10, 1972, of the Law on the Security of the State, which parliament adopted with an overwhelming majority, made available an effective legal instrument adapted to the

particular needs of present circumstances and inspired by the norms of democratic comparative law for the protection of freedom, and this made possible the termination of the state of internal war (which was done on 11 July).

Democracy was preserved without departing from the Constitution and all Uruguayans are proud that constitutional continuity has been maintained; the public authorities have acted in an independent way, each within its respective sphere; parliament, the judiciary and the administrative tribunal have discharged their functions without any interruption; elections have taken place on the date and in the manner laid down in the Constitution and by the law.

Certainly it was necessary to act with energy, to have recourse to constitutional provisions which had not previously been used and to give to some articles of the Constitution an interpretation which was wide, but no wider than the gravity of the situation demanded.

My country does not think that repressive measures resolve all problems. On the other hand, no-one doubts that crime must be combatted and criminals arrested and punished in accordance with the law in order to guarantee public order, which is the basis of liberty.

Subversive violence has nothing to do with force placed at the service of law in a democratic state in order to assure effectively the Rule of Law. Nevertheless, the article which appeared in your REVIEW seemed to put on the same footing subversive violence and the legitimate use of force by the state, a dangerous confusion which I do not think the International Commission of Jurists would wish to encourage.

It is untrue that opposition and criticism have been suppressed.

In Uruguay opposition, criticism and non-conformism are looked upon as the necessary stimulus to progress and change. No-one seeks to defend the social, political or economic *status quo,* but everyone devoted to democracy strives to ensure that the changes to be made should be the outcome, as is our tradition, of free discussion, of the peaceful confrontation of conflicting ideas and of a fruitful dialogue governed by the law and respecting the legitimate will of the majority and all the rights of minorities.

On the parliamentary level, opposition and criticism have been expressed with complete and absolute freedom, both before and after the 1971 elections. Outside parliament, opportunities for opposition and criticism have been preserved within the natural limits of what is reasonable in the very special situation which Uruguay is going through. These limits are laid down in laws brought into force by the Government in accordance with constitutional provisions defining their powers. The relevant sanctions have been applied only in those cases where people have made an apologia for crime, supported subversive action, or advocated the use of violence.

It is not correct that the Government, the police or the armed forces have encouraged, directly or indirectly, the creation or the activity of paramilitary forces of repression (death squads etc.). The authorities have, on the contrary, been at pains to ensure full respect for law and order, by applying the law to all those who have wished to impose arbitrary and irrational use of force as a method of political action.

The Government has not ordered the use of ill-treatment or torture, which would have been contrary to the Constitution (Article 25, alinea 2) and irreconcilable with the traditions of the nation.

Uruguay has not sacrificed its liberties. On the contrary it carries on a struggle all the time against totalitarian subversion, in order that its liberties can survive and remain as the basis of its political life as well as its economic and social development. And if present trends continue, the moment is very near when it will be possible to proclaim the victory in Uruguay, which one can already see emerging, of Justice and Law over violence and crime.

Switzerland's First Ombudsman

The first Ombudsman in Switzerland took office on 1 November 1971 in the City of Zürich. He is Dr. Jacques Vontobel, and his title is The Commissioner for Complaints for the City and Canton of Zürich. To establish clearly his independence, he has set up his office well away from the local authority offices in the former consulting rooms of a retired doctor.

His functions are:

1) to protect individuals against unauthorised acts or maladministration by the local authority;
2) to advise on differences and conflicts between individuals and the local authority in order to arrive at a just settlement;
3) to clear up misunderstandings between individuals and the local authority due to ignorance or misconception of the law;
4) to put people who feel aggrieved in touch with other agencies who can help them to get speedy advice and remedies;
5) to draw the attention of the local authority to what appear to him to be defects in their decrees and laws, and to make suggestions for their improvement.

Dr. Vontobel normally acts only on specific complaints, unless a problem appears to him to be one of general importance. Between 1 November and 31 December, 1971, 154 cases were brought to his attention, of which 30 were found to be outside his jurisdiction. Cases he investigated included complaints about housing problems, wrongful dismissal, pension rights, inflated charges, excessive noise and pollution, and complaints against the police.

We warmly welcome this development and hope that the experience of the Zürich Ombudsman may prove useful to other countries, such as the United Kingdom, who are considering introducing Ombudsmen at local government level.