VII

GENERAL REPORT ON THE JUDICIAL CONTROL OF THE LEGALITY OF UNILATERAL ACTS OF PUBLIC ADMINISTRATION

PRESENTED IN PLENARY SESSION
FRIDAY, 9 DECEMBER 1983

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Mr. President, Ladies and Gentlemen,

By inviting supreme courts with jurisdiction in administrative matters to form an association - whose birth we have just witnessed - the French Conseil d'Etat wished to seize the opportunity afforded by this gathering (the first in a long series, let us hope), to broach a topic designed to stimulate fruitful debate.

Having been privileged to receive and peruse the reports sent in by more than thirty jurisdictions, I believe I can say that the second objective has been fully attained. I feel sure that, more so than the General Report which I am now about to present to you, the series of reports which you have received, and which are due to be published, contain an extraordinary wealth of information.

One of the benefits of any meeting that has been carefully prepared by its participants is that their separate contributions combine to lend to the resulting edifice an utterly new dimension.

For beyond the often technical replies sent in, what emerges are the different constitutional systems. Behind the structures and procedures we can glimpse the "spirit of laws" and the respect for the law. Reading between the lines of certain remarks unwittingly committed to paper, the whole conception of life in society stands forth.

And this bears out an absolutely general law, which is that serious scrutiny of an institution or activity will shed unexpected light on the environment that shaped it and from which it is inseparable.

How can we understand our jurisdictions, unless we set them in their historical context? Yet how unique and incommunicable each history is.

I shall cite just one example, which struck me particularly forcefully, having been taken from an area of which I currently have some first-hand experience, namely the enforcement of court decisions. Some countries have established procedures of coercion or threat; others believe rather in the virtues of persuasion; yet others regret that nothing has been done in this respect and appear to conclude that something needs to be done. But the answer that crops up, as though self-evident, in countries where the sense of civic responsibility is sharpest and discipline freely consented, may be summed up in the following proposition: there is no rule in this area, as non-compliance with a court decision would be unthinkable.

Of course, the reports were unable to go into details, and deeper study is required, notably a closer look at the workings of mechanisms in practice, where they succeed, and where they fail. We are still dealing with generalities, which is inevitable for a first encounter. But we are also discovering our differences, and this is a stimulus to reflection and to the desire to profit from everything that has been said here.

That is what this general report would now like to try to set in motion, by reflecting not only the contents of the written reports but also what I have gleaned from the discussions that took place yesterday and this morning, during the committee sessions.

As to the latter, I believe two general remarks are called for: the first, which emerges from the discussions, is that although varied, the terminology conceals some convergences concerning the basis of law, and this is the justification of meetings aimed at getting closer to the heart of things. I shall be referring to one of two examples later on.

The second concerns measures specific to certain countries, either because they really are characteristic of a highly unusual kind of regime, as in the case of the water tribunals in Finland, but often because these provisions have no practical application. Here too, I shall be indicating one or two such instances later in the report.

It was not possible, on the other hand, in the time allotted to the commissions, to estimate the caseload of our different jurisdictions. However, this would be extremely interesting and would enable us to form some idea of the relative importance of the courts in the control of the legality of unilateral administrative acts. I shall confine myself to two illustrations of my point. The total number of cases submitted for judicial review varies from 50 to 10.000 per year, depending on the country; and within these general figures, some details may also point up certain differences: for instance, each year more than 50 appeals for annulment of acts of public administration alleged to be ultra vires are brought before the French Conseil d'Etat, where as many jurisdictions only rarely hear such complaints.

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I shall now follow the plan of work proposed to the national rapporteurs, and to which they have kindly adhered, even when they may have had some difficulty getting to grips with certain questions. For while the small working party formed to prepare for this Congress did take care, in drawing up the plan, to step beyond the bounds of our own conception of the administrative jurisdiction, I must admit that certain questions were only meaningful in the context of the often subtle solutions devised by the jurisprudence of our own jurisdiction. We may put this down to the fact that the team responsible for the preparation of this gathering was not a multi-national one, and the creation of our association ought to obviate such difficulties in the future.

Three categories of questions were asked, and three committees were set up to discuss them. I intend to examine each question in turn starting with the answers concerning the jurisdiction competent to exercise sovereign control of the lawfulness of administrative acts. I shall then take a look at which acts

are subject to judicial control, and shall conclude with a description of the scope of such control and the powers of the courts.

As worded, the theme clearly ruled out disputes arising from purely contractual claims. On the other hand, claims relating to liability often entail control of the lawfulness of an act, as it is accepted that a government agency that acts unlawfully thereby commits an offence for which it may be held liable.

This had to be said by way of a preliminary remark, but my impression was that the authors of the reports did not regard this as primordial. Quite legitimately, they focused on the solutions arising out of appeals for annulment or claims seeking to block the consequences of an administrative act on grounds of unlawfulness.

I - The jurisdictions in which control of the administration is vested

On this point, there is no need to refer to the first committee's contribution, as most of its time was taken up with reviewing the articles, and it was only able to pay passing attention to the theme.

A. A first distinction needs to be made between two fundamentally different conceptions which were clearly highlighted by the Prime Minister's speech, namely that of countries that do not distinguish between the administration and the private citizen, and which accordingly vest competence for all types of litigation in the same jurisdictions, and that of countries which, taking into account the particular prerogatives which the administration enjoys, have established two categories of jurisdiction, respectively having competence in civil litigation and in disputes involving one or more public administrative bodies.

a) In the first case, represented at this Congres by an appreciable minority comprising Great Britain, Canada, Ireland, Iceland, Norway, Israel, Cyprus and Nigeria - to mention but those countries that submitted reports - the supreme jurisdiction has competence not only in matters of private and administrative litigation but may frequently also rule on the constitutionality of law, in countries where this is meaningful.

Such institutions thus stand at the apex of their respective judiciaries and, with few exceptions, rule on matters of form and procedure. In Israel, however, there exists a direct channel through which to apply to have an administrative decision quashed.

These courts can frequently select cases for hearing.

Needless to say, their members are full judges. The judges are few in number. They are appointed by the executive, and certain reports state that they are appointed "for life", but there is however an age limit.

In many of these countries, though, specialized jurisdictions have been set up. This has happened in Great Britain, and to a lesser degree in Ireland, but these come under the authority of the Supreme Court.

b) In cases of bi-partite jurisdiction, which concern the other countries, we must further distinguish between those countries in which the administrative jurisdiction is entirely autonomous, on the one hand, and those in which the supreme jurisdiction contains an administrative division in addition to its judicial one, and sometimes an audit division and even a constitutional division as well.

Alongside France, which obviously figures among those countries in which the administrative jurisdiction is totally distinct from the judicial jurisdiction, mention must be made of other European countries such as Belgium, Luxemburg, Italy, Greece, Portugal, Sweden and Finland, Poland since 1980, as well as Turkey, Lebanon, and in Latin America, Columbia and Uruguay. While Tunisia's administrative courts belong to a wider institution, it must be classed among those countries having a specific jurisdiction.

It is worth noting that countries with separate administrative and judicial jurisdictions have had either to create an organ to adjudicate conflicts of competence, or else give this task to one of the two categories of jurisdiction. In Belgium, for example, this function is performed by the Cour de Cassation (court of final appeal in matters of form and procedure).

Certain countries in Africa (Benin, Cameroon, Congo, Ivory Coast, Madagascar, Mauritania, Senegal and Togo) have an administrative division as part of a wider jurisdiction. These administrative divisions hear either appeals or final appeals (en cassation) from the decisions of courts of first instance, some of which are specialized, others having competence in both administrative and ordinary judicial matters.

This gives rise to a situation in which supreme administrative jurisdictions control jurisdictions with general competence. This is the reverse of what has been observed of the administrative jurisdictions in the Anglo-Saxon countries, where the competence of the Supreme Court is general.

Lastly, the character of the administrative jurisdiction differs somewhat according to whether its sole function is to pass judgment, or whether it acts as an advisory body to the government as well.

In the latter case, this may affect the status of its members, who may not necessarily be subject to the same regulations as other judges. This happens where the administrative jurisdiction performs a wholly original function, namely to guarantee the proper working of the administration, while upholding the general interest and safeguarding the rights and freedoms of the citizen. In such cases, the administration stands in judgment over itself.

Conversely, the members of a purely judicial institution will have the status of judge, and their autonomy vis-a-vis the judges sitting in the ordinary law courts is justified primarily by the specific character of the law with which they deal.

Nor does this distinction between tasks coincide with the earlier distinction made between structures. Portugal's Supreme Court, for instance, plays no consultative role to the Government in legislative or regulatory matters, whereas several African countries have invested the administrative division of their Supreme Court with this role.

Lastly, mention should be made of Burundi, where an administrative jurisdiction was introduced by the 1981 Constitution, this reform has not yet come into effect, however, and the country still has a unified jurisdiction.

B. The way in which the supreme administrative courts rule on the case brought before them varies greatly, and all we can do here is to indicate the different tendencies.

All courts that hear cases in first and last instance deal solely with appeals for annulment, usually on grounds that an administrative decision was ultra vires. When called upon to rule on the lawfulness of a decision, in claims involving the liability of the administration, they do so either on appeal or en cassation (see above) ; in cases brought before specialized courts, this latter type of ruling appears to be the favoured approach.

Lastly, some countries have specific bodies for dealing with tax disputes, which are therefore dealt with by neither the administrative nor the ordinary courts.

C. The national reports contained a great deal of very interesting information about procedures for the appointment of administrative judges and the guarantees afforded them. But this in particular is one area in which each country has its own rules, and I think honesty forbids any attempt at a synthesis on this point, as it would be liable to betray the substance of what was reported. All we can say is that when the task of appointing judges is performed by the executive, the latter must choose them from among people possessing a degree in law plus sufficient practical judicial experience.

To conclude this section on the jurisdictions themselves, it emerges plainly that their decisions are enforceable ipso facto, and that the principle of justice retenue (in which the court's decision must be submitted to one of the interested parties for approval) is now outmoded (1). To be sure, when dealing with appeals en cassation, they are generally obliged to refer the case back to the jurisdiction whose judgment had been quashed, but this jurisdiction is then bound to submit, and there is no exception to this rule.

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(1) The Burundi report mentions the existence, prior to the 1981 reform but still in force, of a jurisdiction that is bound to submit certain decisions affecting civil service personnel to the Government for approval.

II. - Acts subject to control, and conditons of appeal

Here again, I think there is a need for an introductory remark. The answers given to this part of the questionnaire by the national reports do not permit the same classification as those on the structures of the jurisdictions.

Generally speaking, the answers are fairly similar, with very limited exceptions; where there are differences, they draw attention to a fairly characteristic binary alternative.

a) Authorities or acts exempt from judicial control.

On the question as to whether certain administrative authorities are immune from judicial control, the answer is almost unanimously in the negative. Certain exceptions do exist, nevertheless. In Finland and Turkey, the President of the Republic, when signing a decision alone, is immune from judicial control. In Sweden, the central government administration is similarly immune. But this is the only case, for in general there are no grounds for distinguishing between public authorities.

Solutions relating to administrative acts themselves are more graduated.

By and large, the notion of "act of state", immune from consideration on grounds of lawfulness, is accepted, although its scope is very strictly circumscribed.

In practice, there are two areas in which this notion is operative, namely international relations, and relations between the legislator and the executive. Within this general framework, though, each Supreme Court adopts its own specific solution.

Certain countries reject the notion of "act of state". Such is the case with Belgium or Congo, for instance, although in the former the Conseil d'Etat, basing in itself on the wishes of Parliament, arrives at a fairly kindred result. In the second, there is no control over Parliamentary policymaking. Others remove "political" acts from the scope of judicial control, although the committee was unable to determine precisely what constitutes a "political act".

Control of discretionary power deserves much more detailed discussion, for here solutions apparently flow from jurisprudence, about which more needs to be known. This is plainly a difficulty that courts everywhere are liable to encounter, torn as they are between their concern to avoid hindering the administration in its work and to avoid substituting for it, and their obligation to check arbitrary decision-making and to protect the citizen. Certain reports do mention the principle of judicial control over discretionary power, but they add that appeals are almost always rejected. According to other jurisprudence, the limit is set by the distinction between "reasonable" and "unreasonable".

The French Conseil d'Etat has adopted the criterion of erreur manifeste (manifest error of appreciation). This is one of the cases in which the committee revealed a genuine convergence of concerns, despite the diversity of approaches. But there are many subtle distinctions among them, and it would be necessary to examine specific cases in order to discover how they translate into actual decisions; one wonders whether this might not offer a suitable theme for some subsequent congress.

To conclude this point concerning the limits to the control of certain acts, the legislator may sometimes intervene in this area. The Columbian report states, for example, that decisions concerning civil service discipline, except for dismissals, fall outside the competence of the courts.

The binary distinction emerges clearly when dealing with the possibility of requesting the annulment of regulartory acts.

While a majority of countries permit appeals for the annulment of such acts, the contrary is the case in a by-no-means-negligible number of countries, notably Luxemburg, Poland and Columbia, at least where decrees are concerned, and Portugal, Tunisia and Sweden for regulatory acts by the state authorities.

It is nevertheless worth recalling that in cases where there is no provision for direct appeal, and also, needless to say, where it is not possible to apply for an act to be quashed, the citizen can always appeal against an individual administrative decision on grounds of unalwfulness if that decision was based on a regulation whose lawfulness he (the citizen) disputes.

b) Conditions to be fulfilled for an appeal to be allowed

The first question on this subject concerned the obligation to make an initial appeal through the administration before applying to the judge.

Here again, we find two distinct types of reply.

Countries as diverse as Norway, Cameroon, Benin, Niger, the Ivory Coast, Uruguay, Israel, Poland and Tunisia stipulate that leave to appeal to the courts will only be granted if the plaintiff has first sought to persuade the administration to reverse its decision.

Columbia has established this rule in cases where a hierarchic superior exists, which would appear to rule out voluntary appeal procedures (i.e. appeal to the authority responsible for the contested decision), and Portugal also applies a comparable solution.

In Cameroon, the request must be addressed to the Minister if the decision was taken by the state, and to the executive if taken by a decentralized authority.

Under certain systems, the administration may, if it does not accede to the plaintiff's request, transfer the case to the court for a ruling.

But the commonest system appears to be to refrain from laying down a general rule, and to establish compulsory preliminary appeal procedures in certain well-defined matters. France is a case in point, for tax disputes and in areas where decision-making is decentralized; other examples include Senegal for economic redundancies, and Madagascar, where local authority decisions must be referred to the supervisory authority.

In Finland, in certain matters, notably tax assessments, the administration must be brought into the case.

Meanwhile, several reports draw attention to recent progress made as a result of statutes or jurisprudence according to which silence on the part of

the administration may give rise to an implicit decision; it is then possible to ask the courts to quash such a decision. As a general rule, this solution seems to be a long-established one.

Lastly, in principle, when there is no prior obligation to seek redress from the administration, it is possible, within the time-limit stipulated for judicial appeals, to lodge a hierarchic or voluntary appeal in which case the time-limit alowed for judicial appeal runs from the moment at which a decision (whether explicit or implicit) is deemed to have been taken on this administrative appeal.

As to the need to show an interest in order to obtain leave to appeal, this is generally acknowledged, the conditions being roughly comparable, and the court cannot act proprio motu. But the question as to the right of citizens' associations or trade unions to appeal is more awkward and arises increasingly frequently, according to what was said in committe.

It is worth mentioning certain solutions. In local government affairs, Finnish law allows residents of the borough or municipality a very high degree of access to the courts, and this is not an isolated case.

In Poland and Madagascar, when the courts are informed of an unlawful act they may summons the deciding authority and request it to reconsider its decision, thereby suspending the application of that decision. During the committee discussions, however, this procedure turned out to have been a theoretical one of date.

In Columbia, once an appeal against an act ultra vires has been filed, the plaintiff may not desist.

The question of the role of counsel was raised, and the answers were varied: in some cases it is compulsory to be represented by counsel, in others not, and countries have switched from one to the other. Legal costs are either low or non-existent.

III - The scope of judicial control and the powers of the courts

Three phases need to be distinguished here:

- During hearings, does the court possess powers of investigation?

- In reaching its decision, what can the court impose on the administration?

- Does it have the means to enforce implementation of its decision?

a) Although this question was not asked, and although the reports subsequently made no formal mention of it, it does appear that the administrative courts have the powers to conduct their own investigation and so to subpoena all necessary documents from the administration in order to ascertain the full facts of the case. At any rate, these courts very generally possess broad powers of investigation. But it appears that the administration is often slow to reply, in practice.

This may go so far as, in Greece for example, allowing the jurisdiction to order that disciplinary measures be taken against a civil servant who refuses to comply. Lebanon has a rather similar procedure. Here again, though, it emerged from the discussion that this original solution is never actually put into effect. In Togo, the court may order the civil servant who took the contested decision to appear before it.

Apparently, defendants cannot claim protection of the official secrets act before the court, except in cases of military secrets or on grounds of public safety, which are sometimes invoked unjustifiably. Solutions regarding divulgation of medical secrets are somewhat more flexible and varied.

In some countries, if the administration fails to comply with a court request, the facts alleged by the plaintiff are held to be established. This is so in Italy, and in France too, as a result of a jurisprudential interpretation well-known abroad. In Columbia, there exists a category of "interim judgments in order to improve an appeal", in order to clear up points that remain obscure; as elsewhere, the courts may call for explanations, inquiries, and expert examinations.

Lastly, in Madagascar, court requests are channelled through a single body, the Department of Legislation; this was reported in committee to be an effective solution.

Things happen differently where the same courts handle civil, criminal and administrative affairs. In Great Britain, Norway and Nigeria, for instance, it is up to the parties to the case to conduct their own investigations; in such countries, it is rare for the court to intervene, and the representative for Nigeria said that there was probably room for progress. In Israel, though, the court does have investigative powers. I think it appropriate to add a point of fact here, which is that in the Anglo-Saxon tradition, counsel plays a particularly active part during the investigation stage, obliging the administration to justify its actions.

That said, in all cases, and regardless of the procedure, it is ultimately up to the court to appraise the facts laid before it, and this raises a difficulty which was stressed repeatedly.

There remains one question that seems to produce a variety of answers: how far may the court go in its search for a settlement? Can it raise arguments not put forward by the parties?

When this possibility was raised, it was replied that the only grounds that the courts may raise automatically are those of public order, and that in such cases this would even appear to be the court's duty. In Italy, for instance, a court may not allow an act to subsist if it has established that it is unlawful.

One of the acknowledged attributions of the administrative courts is the power to order a stay of execution against an administrative act. This was one of the fields in which replies were most uniform.

In none of the countries, apparently, does the fact of applying to the courts automatically entail a stay of execution, so that the contested act continues in effect. But this may entail some kind of miscarriage of justice. For judicial procedure is necessarily adversarial and cannot be over-hasty in examining the substance of a dispute. The only reported exception was

Finland, where the law states that appeal to the court automatically suspends the contested decision. But here again, there are many exceptions to this rule in practice.

Thus in all countries, according to the reports, the courts may, in exceptional circumstances, order a stay of execution of the disputed act. The sole differences lie in defining what constitutes an exception: in most cases, execution of the act would have to have irrevocable consequences. Belgium, in this respect, reports only extreme cases, such as the decisions to expel a foreigner. Obviously, a second condition for the granting of a stay of execution is the requirement that the appeal present serious prospects of being upheld.

Lastly, certain countries make no provision for a stay of execution on appeal against a judgment quashing an administrative decision.

b) What is the effect of the court's decision ?

One must of course distinguish here according to whether it is possible to apply for the annulment of an act, or whether it is only possible to claim that an act is unlawful in exceptional cases.

In the first case, the courts are usually empowered only to reject the appeal or to quash the contested act, but not to substitute for the administration or to issue instructions to it.

However, certain measures open to the jurisdiction do deserve mention. In Poland, for instance, the court may, before ruling, refer the case back to the administration and order it, within the time limit imparted, to rectify formal errors. In Sweden, the court has powers of substitution in respect of decentralized state bodies. In Canada too, the court may act in this way. In Israel, the court may either quash the act or refer the case back to the administration for reconsideration.

Lastly, in the British system and in those inspired by it, the court may issue an injunction, albeit in conditions that would be difficult to describe here.

As a general rule, annulment is retroactive in effect and is binding on all. The distinction between the effects of annulment of individual acts and of regulatory acts did not give rise to any detailed discussion. Suffice it to say that in France the annulment of a regulatory act makes any individual measures taken on the basis of this text unlawful; however, if these individual measures are not themselves contested within the stipulated time limit, they are held to be final. In Italy, a third party may contest the quashing of an act and ask the administration to repeat the act.

Under Anglo-Saxon law, as in Turkey, the court itself states the conditions under which its ruling is retroactive.

When the court upholds an objection on grounds of unlawfulness - or itself notes this as a point of public order - it does not declare the unlawful act to be nul and void, it merely draws the appropriate consequences with regard to the case before it.

The act therefore remains in existence and may therefore continue to produce its effects. But in legal systems in which there is no possibility of appeal on ultra vires grounds, the fact of establishing that an act is unlawful entails its complete neutralization in practice. In France, it is recognized that the administration ought to repeal a regulation if this is unlawful, but if it fails to do so the regulation will continue in effect. However, a very recent decree (28 November 1983) provides that, in such an event, acts affecting individuals and based on a regulation that has been found unlawful in court, may be appealed, even after expiry of the legal time limit.

c) What can the courts do to enforce their decisions ?

Generally speaking, the court's task ends with the handing down of its decision, which is enforceable.

It is then up to the citizen, if he has obtained satisfaction, to ensure that the judgment is implemented by requesting the compliance of the administration.

If he can establish that the latter has infringed, or has failed to abide by, res judicata, he may then sue for damages through the courts, but this is tantamount to an admission of failure, as it means that the judgment has not been put into effect.

Certain reports, from Belgium and Niger for example, mention the practices of the so-called "ratifying" law, which is employed when execution of the judgment is liable to hinder the normal workings of the public administration. This happens in France.

But it is also worth noting that certain countries' legislation contains procedures that allow the courts to intervene. A variety of such procedures exist, and it would be best here to list them, without seeking to tie them in with any more general notions.

In Poland, for instance, the court may ask to be kept informed about what has been done to implement its decision. In Columbia, the administration must, within thirty days of notification, report on what is being done to implement a decision against it; it is forbidden to repeat the quashed act, and in the event of failure to comply with this rule the court may order a stay of execution of the measure and sanction against the offending official. The Director of Public Prosecutions is responsible for ensuring respect for these rules.

In Portugal, in recent years, a statute also allows a period of thirty days in which to implement a judgment. After expiry, the beneficiary of the court's decision may apply for enforcement, which must then occur within sixty days failing legitimate excuse, which may itself be reviewed by the judge without prejudice to any damages that may become due as a result of non-compliance. If the court rejects the excuse, it may instruct the administration to do certain things, in which case non-compliance or delay will constitute a breach of discipline.

In Italy, the citizen may apply to the court to order the necessary enforcement measures and appoint a commissioner to oversee the administration.

France has taken several steps in this area to ensure that the decisions of the administrative jurisdiction are carried out in full. Citizens may now refer to a new organ of the Conseil d'Etat called the Report and Study Commission, which will then contact the administration concerned to invite it, and sometimes help it, to carry out the decision; the Minister himself is entitled to request guidance from the commission on how to implement certain decisions where these raise difficulties. Tunisia has established a rather similar procedure for providing assitance to the administration.

Furthermore, a recent law allows the Conseil d'Etat to impose a daily fine on any administration that fails to comply with a judicial decision. The Belgian report mentions a decision imposing a fine, but an appeal against it is now pending.

All these procedures would seem to suggest that government agencies do not always comply with court rulings where these go in favour of the plaintiff. The reports do not give much idea of the extent of these difficulties, although they appear to be exceptional; one can but envy those countries in which non-compliance with a court decision is unthinkable, and where refusal to do as bidden by the jurisdiction constitutes "contempt of court", something that the administration never commits.

That leaves us with the question raised in the course of discussion as to the role of jurisprudence on the administration. In certain countries such as Israel, no government agency would dream of flouting the jurisprudence of the Supreme Court, and this appears to be quite frequent. In France, government departments pay very close heed to decisions of the Conseil d'Etat concerning them.

As I conclude this over-long report, I should like to make a few remarks of my own.

First, I regret not having been able to communicate all the interesting information contained in the very full reports relating to those jurisdictions that function according to highly original sets of rules. Particular mention should be made of the reports sent in by Poland, Finland, Columbia and the Anglo-Saxon countries, although the list does not end there.

I feared that, in resuming them, I might distort their content, and I feel sure that with the circulation of the proceedings they will be appreciated as they deserve.

Secondly, if I may say so, while in very many cases I have the feeling that the solutions described were ones that had been formulated and spelt out in the jurisprudence of the French Conseil d'Etat, the latter frequently bear much ressemblence to solutions evolved in countries that have no administrative jurisdiction. All this represents a kind of common stock of rules and practice which underscores the profound affinities that exist between the supreme jurisdictions today combined in our new association, and I should like to mention here the testimonial of the Lebanese delegate to one of the committees, when he spoke of the Lebanese Council of State's concern to safeguard legality as a token of the continuity of the state in these tragic times for his country.

For while structures may vary greatly, what seems to me to be the common heritage of all administrative judges is both the duty to ensure that the administration acts strictly in keeping with legality, but also to safeguard that margin for appreciation which must be allowed him for the sake of good public administration.

It seems to me that the initial, very general approach made possible by this gathering clearly indicates that, with subtle differences here and there, statutes and general principles do strike this balance. We now need to go further and to see how these statutes and principles are applied in practice, setting ourselves more circumscribed themes for our future gatherings.

That will be the task of the International Association of Supreme Administrative Jurisdictions, and this I am sure it will carry out with credit.

Thirdly, I would like to point out that, in order to maintain the balance spoken of above, the fact of investing a single institution with both a judicial role and a consultative role vis-à-vis the government in legislative or regulatory matters, may prove to be an advantage.

In this respect, the evolution, since the end of the Second World War, of the French Conseil d'Etat is worth mentioning, this jurisdiction having probably increased its administrative caseload more than any of the others represented here.

For judging from the reports submitted, this trend would appear to be the exception. In many countries, the task of advising the government is either not vested in the jurisdiction responsible for administrative affairs, or it is subject to the initiative of the executive, which does not appear to consult it very often, or else is confined to fairly restricted categories of acts.

However there is the risk that administrative jurisdictions will neglect the demands of good public administration to the detriment of the citizens themselves, and may even, by interfering in the administrative life of the country, introduce government by the court.

Perhaps some future congress may choose to consider this awkward problem.

Lastly, more generally, one question has been raised and strikes me as deserving mention, and might even warrant discussion, namely that of the ultimate purpose of the administrative jurisdiction.

Certain Third World countries have pointed out that the administration often requires guidance in its work, and that the courts should not hesitate to be explicit and even explain what ought to be done in future. This creates the risk that jurisprudence might suffer a loss of rigour, and of an eventual confusion between the judicial and the executive functions.

This then raises a question that demands reflection: more generally, should the court confine itself to laying down the law or, can it give due weight to contingencies? Is it the censor of the administration or its mentor? How is it to reconcile the different aspects of these tasks?

There is presumably no simple answer to this. It must in particular take into account the ability of the administration to apply the law, and this may raise the problem of the training given to administrators.

Here again, there is surely a potential theme for a congress here.

Mr. President and colleagues, the foregoing represents the conclusions, albeit very imperfectly resumed, which I have felt able to draw from this first exchange of views within the framework of our new association.

I thank you for your attention.