

ABORTION LAWS

*A SURVEY OF
CURRENT WORLD LEGISLATION*



WORLD HEALTH ORGANIZATION

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This survey of existing legislation on abortion is based on such source material as was available, for each of the countries concerned, at the Headquarters of the World Health Organization up to the end of September 1970. As with all such surveys, it is not intended to provide an exhaustive coverage of world legislation in the field in question, but to give typical examples of the form that such legislation has taken.

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Introduction

"Abortion is the dread secret of our society. It has been relegated for so long to the darkest corners of fear and mythology that an unwritten compact virtually requires that it remain untouched and undiscussed" — so writes Lader in the introductory remarks of his 1966 work on abortion.⁶⁰ While it was in fact true until quite recently that the number of papers devoted to the problem was comparatively small, this is no longer the case, as witnessed by G. K. af Geijerstam's annotated bibliography of induced abortion, which includes some 1175 references.³² Of the latter, a large number relate to studies of the legislation, either in a particular country or region or even more comprehensive in scope. Among the regional or general studies, particular mention should be made of those published by R. Roemer, C. Tietze, K.-H. Mehlan, M. Potts, A. F. Guttmacher, H. P. David, P. O. Hubinont, O. Akinla and I. R. Nazer. In addition, various international conferences have dealt with the problem in recent years, as, for example, the United Nations World Population Conference, held in Belgrade in 1965,¹⁰⁹ the Eighth International Conference of the International Planned Parenthood Federation, held in Santiago, Chile, in 1967,⁴¹ the international conference convened by the Association for the Study of Abortion at Hot Springs, Virginia, in 1968,⁴⁰ and the Pakistan International Family Planning Conference at Dacca in 1969,⁹⁸ to cite only the most recent of these meetings.

It is no doubt a truism to affirm that the fact that a large number of countries have not faced up to the problem of abortion is solely due to religious and moral obstacles to any discussion of the question. Moreover, in practice, the physician himself is confronted with problems of professional ethics or conscience which may, even where the legislation is particularly flexible, militate against his carrying out the pertinent provisions. On the other hand, in countries where the law is framed in uncompromising terms, the physician may be faced with dramatic situations in which the performance of an abortion, even if clearly justifiable, may have formidable consequences.

It may be remarked that whenever countries introduce more liberal legislation on abortion, the argument most frequently advanced to explain the change of attitude is the need to combat criminal abortion more effectively. It is well known that in those countries where abortion legislation is most restrictive, the number of illegal abortions can be counted in hundreds of thousands. It is a notorious fact that a woman resolved to have an abortion will not be diverted from her objective, in spite of its illegality, after being refused by a physician. In such cases, she inevitably has recourse to the services of a professional abortionist, with all the dangers that this involves. Many authors have, moreover, pointed out that even where the legislation on abortion is liberal in character, the number of illegal abortions may remain high.

The liberalization of abortion legislation or, on the other hand, the imposition of restrictive legislation, may have quite striking demographic consequences. To cite an example, a country which in 1966 imposed more rigid criteria than previously for legal abortion showed a tripling in the birth rate a year later. While it can be stated, in general, that the current world tendency is towards a liberalization of the legislation on abortion, certain countries have in contrast moved in the opposite direction, either on account of the abuses arising from an excessively free interpretation of the provisions in force or because of a desire to avoid a diminution in the birth rate.

If one studies the evolution of legislative provisions on abortion, one finds that the problem is generally first dealt with in the penal legislation. Usually repressive to begin with, this legislation may later evolve to provide for cases in which abortion is not punishable and, in particular, those where it is justified on medical grounds, i.e. to safeguard the life or health of the woman. For those countries envisaging a further liberalization of their legislation on the subject, the next stage is the introduction of specific provisions laying down the indications and contraindications and the procedure to be followed for obtaining authorization of abortion. The parallel obligation to provide advice on contraception is frequently included in such enactments. Provision is even made in some cases for sterilization.

Mention should be made at this point of an aspect which is not without interest, namely the influence of legislation promulgated in a particular country on that of other countries. This was, for example, the case with Icelandic legislation for the other Scandinavian countries, French law for numerous African and Asian countries, and United Kingdom law for the Commonwealth countries. Ethiopian legislation shows the unmistakable influence of the Swiss Penal Code. Certain initiatives within countries having a federal system may also play an important role; this was, for example, the case in the United States of America, where the Model Penal Code drawn up by the American Law Institute influenced the legislation of many of the States.

A comparative survey of legislation on abortion in the different countries could be undertaken by three different approaches, viz., an examination based on geographical areas, an analysis of the existing situation based on the different ways in which it evolved and, finally, an examination based on the nature of the indications (and contraindications) for legal abortion. The latter approach was in fact that adopted by Roemer⁹³ in a recent comprehensive study of the problem. A distinction can indeed be made between those enactments which do not allow abortion under any circumstances, those which permit abortion solely on medical grounds, those which also recognize medico-social and ethical indications and, finally, those which further extend the indications to include social and economic circumstances. Those cases where the pregnant woman may have her pregnancy terminated on request could be added to this classification. If, however, one analyses the situation obtaining in most countries which do provide for "abortion

on demand", one notes that the net effect of the contraindications prescribed in the legislation is that requests for abortion are, in practice, not infrequently refused.

The first of the three approaches indicated above, i.e. that based on geographical region, will be adopted in the present study. It is however proposed to discuss, in an introductory section, the grounds on which abortion is permitted, the contraindications to abortion, the procedures to be followed in order to obtain authorization for the operation, the conditions under which the latter is to be performed, the formalities governing the reporting and registration of legal abortions and, finally, any special provisions applicable to citizens of foreign countries.

This study should not be regarded as implying the adoption of any particular stand vis-à-vis the problem of abortion, its sole purpose being to provide a survey of the world legislation on the subject, particularly in view of the frequent and substantial changes in the legislation in recent years.

General survey of legislation

An analysis of the various enactments concerning the interruption of pregnancy demonstrates that the most important aspect of the question is that dealing with the indications and contraindications. Where abortion is legally authorized, detailed and precise provisions regarding the procedures to be followed are incorporated in the legislation. Authorization is generally given by one or two physicians or by a special commission or committee, provision being made for appeals against their decisions. The requirement that abortions be performed on an in-patient basis, most often in establishments specially approved for the purpose by the competent authority, is another significant aspect generally embodied in the legislation. The competent authority normally requires the reporting of all routine cases of therapeutic abortion, while there may be special procedures for notifying emergency abortions performed by a physician as well as suspected cases of criminal abortion. Even in those countries which have adopted a liberal abortion policy, the provisions concerning foreign citizens remain more or less strict, the aim obviously being to prevent the country becoming a so-called "abortion mill" or "abortion mecca". It is interesting to note that many enactments establishing more or less liberal criteria for abortion also include provisions dealing with instruction on contraception and, in certain cases, with more radical measures such as sterilization.

Indications for legal abortion

The indications for legal abortion can be broadly divided into medical indications, eugenic (also termed fetal) indications, humanitarian (also termed ethical or judicial) indications (e.g. where pregnancy is the result of a criminal act such as rape or incest), medico-social indications and purely social indications.

It should be underlined that in certain countries, such as Spain, Ireland, the Philippines, Portugal and the Dominican Republic, no explicit exemption from the prohibition of abortion, not even for the purpose of saving the life of the pregnant woman, is provided for, either in the penal legislation or in any other appropriate legislation. Moreover, in Spain (as well as, until recently, in France), publicity in favour of birth control and the sale of contraceptive devices or products are still prohibited.

Medical indications

The most stringent legislative texts authorize abortion only where the operation is necessary to save the life of the woman. The medical concept of the safeguarding of life has often been extended to include the preservation of the health of the woman, the term "health" being sometimes defined to cover mental health as well as physical health. Most authors point out the imprecision of such concepts as "averting a risk to life" and "physical or mental health" and, in consequence, the danger to which the physician may expose himself by interpreting these terms too freely. Certain writers have even referred to the definition of health in the preamble to the WHO Constitution, although the framers of this definition hardly envisaged its application in relation to such problems as abortion.

The preservation of the life of the pregnant woman is still the only indication for therapeutic abortion recognized by the legislation of France, Venezuela, Cambodia, Senegal, Pakistan, and many of the States of the United States of America, to cite only a few examples.^a It should moreover be pointed out in this connexion that, in France, the Code of Medical Ethics specifies that it is not the therapeutic abortion itself which is authorized but rather "a surgical operation or the application of a therapeutic procedure likely to entail the interruption of pregnancy".

In a number of countries, abortion is authorized both to save the life and to preserve the health of the pregnant woman, this being, for example, the case in Ethiopia, Canada, Argentina, Honduras, Peru, Switzerland, Thailand, and certain States of the United States of America. The possibility of legal abortion on medical grounds is obviously provided for in the legislation of countries which also permit abortion on medico-social and social grounds. An exhaustive list of physical and mental diseases which constitute indications for therapeutic abortion is annexed to the enactments of certain countries.

Eugenic indications

An increasing number of countries are tending to include eugenic indications among the grounds justifying the termination of pregnancy. The purpose of such provisions is not merely to prevent the transmission of hereditary diseases but also to avoid the birth of children liable to

^a In France, however, a private bill [proposition de loi] has just been presented to the National Assembly; this would extend the grounds for legal abortion to cover medical, eugenic and ethical indications.

be affected by physical or mental disorders as a result of intra-uterine damage, whether caused by disease or toxic agents. Eugenic indications are included in the legislation of the Scandinavian countries, the East European countries, the United Kingdom, Singapore, South Australia, Japan, Cuba, the States of the United States of America which have followed the Model Penal Code, and Turkey. Certain of these countries, e.g. Turkey, have established a precise list of cases in which there is a risk of a serious defect affecting the fetus or succeeding generations (see p. 43). In Sweden, an amendment to the basic Law, adopted in 1963 as a result of the accidents due to thalidomide, prescribes that a pregnancy may be terminated when there is a risk that, as a result of some injury during pregnancy, the child will be affected by a serious disease or deformity.

Ethical indications

Many countries provide for the possibility of legal abortion in cases where the pregnancy results from a criminal act such as rape, incest, or sexual intercourse with a minor or a person suffering from a mental disease or deficiency, or even, as in the case of Jordan and Lebanon, where it is a matter of preserving the honour of the pregnant woman or her family (in this context, it may be mentioned that the Penal Code of Colombia provides for a reduction in the penalty, or even a free pardon, in cases of illegal abortion where the last-mentioned motive can be invoked).

Medico-social indications

While most of the countries of Western and Southern Europe, Latin America, Asia and Africa continue to exclude medico-social factors as indications for the termination of pregnancy, explicit provision for such grounds is made in the legislation of, for example, Japan, the United Kingdom, and the Scandinavian and East European countries. The bill submitted to the Indian Parliament²⁰ also embodies such indications. Moreover, in certain Swiss cantons, a liberal interpretation of the pertinent provisions of the Federal Penal Code enables consideration to be given to grounds of a medico-social character in decisions regarding the authorization of abortion.

The first country to have introduced the concept of medico-social indications was Iceland; as early as 1935, its legislation specified that, in determining whether a "serious danger" existed justifying abortion later than the 8th week of pregnancy, such factors as several previous deliveries in close succession, the period of time since the last delivery, domestic difficulties resulting from the presence of infants in the household, a difficult financial situation, or the ill-health of other persons living in the same household, require to be taken into consideration. This concept was subsequently adopted by certain other countries. In Sweden, for example, the Abortion Law of 17 June 1938 (which is still in force) was amended in 1946 to provide for legal abortion "when it

can be assumed, considering the conditions of life of the woman and other circumstances, that her physical or mental strength will be seriously impaired by the birth and care of the child". In Denmark, the Law of 23 June 1956, which repealed a Law dated 18 May 1937, introduced a provision specifying that, in evaluating a danger to the life or health of a pregnant woman, "an appreciation shall be made of all the circumstances of the case, including those conditions under which the woman will have to live, and consideration shall be given not only to physical or mental illness, but also to any actual or potential state of physical or mental weakness" (the provisions of the new Law of 24 March 1970 are even more specific in this respect). In Finland too, the Law of 17 February 1950 prescribed that, in determining the extent of the danger to the pregnant woman's physical or mental health, account should be taken, where necessary, of any particularly difficult conditions of the pregnant woman's life and of other circumstances affecting her state of health; this provision was reproduced, in a more specific form, in the new Law of 24 March 1970. Under the terms of the Norwegian Law of 11 November 1960, "any special predisposition of the woman to physical or mental disease shall be taken into account [in evaluating the danger to her life or health] as well as her living conditions and other circumstances liable to affect her health or to result in physical or mental breakdown". The Eugenic Protection Law of Japan allows pregnancies to be terminated if the woman's health would be seriously affected, on account of physical or economic factors, by continuation of the pregnancy or by delivery. In the United Kingdom, the Abortion Act 1967 lays down that, in determining the extent of the risk of injury to the pregnant woman's health, "account may be taken of the pregnant woman's actual or reasonably foreseeable environment". There is a similar provision in the South Australian Act assented to on 8 January 1970, in the Oregon Act of 1969 and in the bill now before Parliament in India.

Social indications

Countries desirous of liberalizing their abortion legislation generally introduce more or less extensive social indications as grounds for legal abortion. Such indications have been adopted, in particular, in the countries of Eastern Europe and are also embodied in the new abortion laws passed in 1970 in Denmark and Finland. Where social indications are accepted, the legislation in question usually specifies that authorization is not granted after a particular stage of pregnancy (varying from 10 weeks to three months, depending on the country).

The fact that a woman already has a number of children under her care is a frequently specified social indication. In Eastern Germany, for example, abortion is authorized where the pregnant woman has already had four children with an average interval of less than 15 months between each delivery, her current pregnancy having commenced less than 6 months after the last delivery, or where the pregnant woman (either alone or together with her husband) has legal responsibility for five or more children living in the household. In Bulgaria, abortion is authorized

in women who have already had three or more children (in the case of women with one or two children, the approval of a special medical board is required). Abortion is permitted in Romania in women who have already had four children, and are responsible for their care; the same applies to Czechoslovakia in the case of women with at least three children. No special authorization is now required in Denmark for abortion if the woman has already had at least four children, under 18 years of age and residing with her. Abortion is authorized in Tunisia where the parents already have at least five living children (no other grounds for legal abortion are in fact recognized other than medical indications).

Other social indications for abortion recognized by, for example, the Czechoslovak legislation, are the death or disability of the husband, disruption of the home, predominant economic responsibility of the woman for the maintenance of the family or the child, and difficult circumstances of an unmarried woman resulting from her pregnancy.

It is interesting to note that in Singapore, the "environment" (including the family and financial circumstances) of the pregnant woman constitutes an indication *per se* in contrast to the position in the United Kingdom (where it is specified merely that the woman's environment may be taken into account in assessing the risk to her health).

Although the Japanese Eugenic Protection Law makes no explicit provision for social indications as such, it would appear that the Law is liberally interpreted and in practice, according to Muramatsu,⁷⁶ numerous abortions are authorized on purely social grounds.

Age as an indication for abortion

The fact that the pregnant woman is below a certain age (which may be considered as a social and humanitarian indication) or, in contrast, is above a specified age (which may be regarded as a medico-social, medical or even eugenic indication), is in some countries sufficient grounds for legal abortion. Thus, abortion is authorized (provided it is performed before the prescribed gestational time limit) if the woman is less than 16 or more than 40 in Eastern Germany, less than 17 or more than 40 in Finland, and less than 16 or more than 45 in Czechoslovakia. In Denmark, an abortion may be performed, subject to the authorization of the competent committee, if the woman is incapable for the time being of giving proper care to a child on account of youth or immaturity. If the woman is at least 38 years of age or will have reached this age before the end of the 12th week of pregnancy, an abortion may be performed without special authorization. In Bulgaria, abortion in women under 16 years of age is subject to the consent of the parents and the authorization of a medical board; women over 45 years of age are entitled to have an abortion without having to obtain board approval.

Abortion on demand

A statute which enables a woman to have her pregnancy terminated on request, without having to show evidence of any indications, represents the ultimate stage (other than the repeal of all abortion laws) in

the liberalization of abortion legislation. This is the case in Hungary and the USSR (subject however to the reservations mentioned below) and in three of the States of the USA which have recently adopted new laws on the subject (Alaska, Hawaii and New York).

In Hungary and the USSR, the operation does remain subject to a number of formalities whose effect may be to limit the effective scope of the measure. Thus, in Hungary, the pregnant woman is required to submit her application in person to the competent board which (except if the indications are medical or eugenic) must try to convince her to continue the pregnancy, whenever it deems it expedient to do so, and must inform her of the prejudicial effects which an abortion may have on her health, especially where the operation is repeatedly performed. If the woman maintains her application in spite of these efforts to dissuade her, the board must authorize abortion. Authorization may however be given in such cases only during the first 12 weeks of pregnancy, and the operation must be performed in a hospital establishment. Similar dissuasive measures are taken in the USSR; moreover, the Instructions issued in 1955 also include a list of contraindications to the operation (see p. 13).

In the USA, the State of Alaska has recently passed a law which provides that an abortion (defined as "an operation or procedure to terminate the pregnancy of a nonviable fetus") is legal provided it is performed by a licensed physician or surgeon, in a hospital or other facility approved for the purpose and the woman has been domiciled or physically present in the State for 30 days before the operation. The State of Hawaii has adopted a similar act, although in this case the minimum period of presence in the State is 90 days. Under the terms of a New York act which amended a provision of the penal law of that State, an "abortion act" is justifiable when committed upon a female with her consent by a duly licensed physician acting: (a) under a reasonable belief that the operation is necessary to preserve her life; or (b) within 24 weeks from the commencement of her pregnancy.

Contraindications to abortion

Legislative enactments which permit legal abortion on the basis of the indications discussed above frequently also establish an explicit list of contraindications and thus limit the practical scope of the measure. In other cases, restrictions on the access to legal abortion are laid down with such a degree of inflexibility that the texts in question can be regarded as implicitly providing for contraindications. In contrast, no explicit or implicit provision for contraindications to abortion is made in certain countries, as for example India (Medical Termination of Pregnancy Bill), certain States of the United States of America, Morocco and the United Kingdom, while elsewhere the question of contraindications is left to the judgement of the competent physician, as is the case in Poland and Switzerland (in the latter country the physician is also responsible for assessing the indications).

There is no doubt that the most important contraindication to legal abortion is the progress of the pregnancy beyond a certain stage, this being an essential factor in decisions concerning the authorization of the operation; the latter does of course become increasingly hazardous after a certain period and the concepts of fetal viability and infanticide may then become pertinent.

There are however variations from one country to another in the time limit beyond which an abortion may no longer be performed. In the United States of America, for example, the operation is normally authorized until the 20th week in California, the 150th day in Oregon, the 24th week in New York, the 26th week in Maryland and for as long as the fetus is non-viable, in Alaska and Hawaii. It is interesting to note in this context that until approximately the middle third of the 19th century there was "no legal prohibition against the termination of pregnancy before quickening" in the USA⁶³ (this was also the case in England until 1803). The concept of "quickening" is of ancient origin, being encountered in theological writings on fetal life and later taken up by English jurists.

In Tunisia, abortion on the basis of social indications (i.e. when the parents already have at least five living children) is permitted only during the first three months of pregnancy (no time limit is however prescribed where the abortion is required to preserve the health of the mother). In Japan, the Eugenic Protection Law defines "artificial interruption of pregnancy" as the induced expulsion of the fetus and placenta during the period when the fetus is not viable outside the mother's body; according to Muramatsu,⁷⁶ the operation is in practice generally performed only during the first three months of pregnancy. In Bulgaria, the time limit is fixed at 10 weeks, whereas in the USSR, as in Czechoslovakia, Eastern Germany and Hungary, it is fixed at 12 weeks. The position in Romania is that abortions may in principle be performed only during the first trimester although where a grave pathological condition is found to be endangering the life of the woman, an abortion may be carried out up to the sixth month. In Yugoslavia, abortions must be performed during the first trimester whenever the indications are social or economic in character; where, however, the operation is justified on medical grounds as being the only way to save the life or avert a serious danger to the health of the woman, it is carried out irrespective of the time which has elapsed since conception. In the case of eugenic or ethical indications, a pregnancy may be terminated after the first trimester only if the operation will not cause any serious harm to the health, or direct danger to the life, of the pregnant woman.

According to the Icelandic Law of 28 January 1935, which is still in force, an abortion may be performed up to the 28th week if the continuation of the pregnancy would seriously endanger the woman; beyond the 8th week of pregnancy, however, the physician may induce an abortion only if there is no other way of averting the danger in question. Under the terms of the new Danish Law of 24 March 1970, an abortion may not be performed (other than to avert a danger to the woman's

life or a serious risk to her health) after the 12th week of pregnancy, unless the competent committee or appeals board has granted special authorization; the Law of 23 June 1956, now repealed, had fixed 16 weeks as the limit beyond which an abortion could not normally be performed (except in the case of a danger to the woman's life or health). In Finland, the limit remains fixed at 16 weeks (except where justified on the grounds of a disease or physical defect in the woman) under the new Law of 24 March 1970; the State Medical Board may however authorize an abortion after the 16th week, although no later than the 20th week, if conception occurred before the woman reached the age of 17 years or for other special reasons. The Norwegian Law of 11 November 1960 prescribes that, unless there are special reasons, an abortion may not be performed more than three months after conception. The normal time limit in Sweden is 20 weeks, although this may be extended to 24 weeks by special authorization of the National Board of Health and Welfare. In Singapore, the time limit is normally 24 weeks in the case of abortions performed on the basis of medical or eugenic indications; where the indications are social or humanitarian, the time limit is 16 weeks.

The presence in the woman of certain diseases which could be aggravated by an abortion, as well as a recent previous abortion, are among other contraindications to legal abortion prescribed in the legislation of a certain number of countries. In the USSR, for example, the Instructions of 28 December 1955, made for the implementation of the Decree of 23 November 1955, list the following contraindications: acute or chronic gonorrhoea, acute or chronic inflammatory conditions of the sexual organs, purulent foci, irrespective of localization, acute infectious diseases, and a previous abortion within the preceding six months. Under the terms of an Ordinance dated 21 December 1962 in Czechoslovakia, acute or chronic inflammatory diseases of the sexual organs, purulent foci likely to prevent the successful performance of the operation, acute communicable diseases, ABO incompatibility in primigravidas, and the performance of an abortion within the preceding six months, constitute contraindications to abortion, although exemptions may be granted where continuance of the pregnancy could endanger the life of the woman. Provisions of a similar nature are included in Bulgarian Instructions (No. 188) promulgated in 1968.

*Authorities responsible for decisions regarding legal abortion;
consent of interested parties; etc.*

Except in emergencies, where the legislation generally permits the physician to intervene directly, decisions authorizing the termination of pregnancy are taken on the basis of the opinion of one or two physicians or of a committee or commission specially established for the purpose. In Chile and Peru, for example, a therapeutic abortion may be performed only if two physicians have expressed their opinion in favour of the operation. In Honduras, the Code of Medical Ethics prescribes that where an abortion is indicated for therapeutic purposes, a medical

committee (the composition of which is not specified) must issue a written certificate confirming the necessity of the operation. In France, the attending physician must obtain the opinion of two medical consultants, one of whom must be selected from the list of experts attached to the civil court; after an examination and discussion of the case, these two consultants must certify in writing that the life of the mother can be saved only by means of a therapeutic abortion.

In Ethiopia, the presence of a grave and permanent danger to the life or health of the pregnant woman must have been diagnosed and certified by a registered medical practitioner after an examination; the abortion is, in addition, conditional upon the findings and concurrent opinion, after a period of observation if necessary, of a second medical practitioner qualified as a specialist in the alleged defect of health from which the pregnant woman is suffering, and empowered to issue the necessary authorization by the competent authority. These provisions have clearly been influenced by those of the Swiss Penal Code which specify that the termination of a pregnancy by a licensed physician is subject to the written consent of the pregnant woman and the concurrence of a second licensed physician, who must be a specialist in the branch of medicine covering the pregnant woman's condition and must be authorized, either generally or in each individual case, by the competent authority of the canton in which the woman is domiciled or in which the operation is to be performed; if the pregnant woman is incapable of judgement, the written consent of her legal representative is required.

The bill before the Indian Parliament²⁰ provides that the decision whether to perform an abortion is taken by one physician where the pregnancy has not passed the 12th week and by two physicians, acting together, between this stage and the end of the 20th week. In Japan, the physician designated by the Medical Association may perform an abortion, in the cases provided for in the law, at his own discretion, subject to the consent of the woman concerned and the spouse. The consent of the latter is however not required if he cannot be located, fails to declare his intentions, or dies after conception has occurred. If the pregnant woman is insane or feeble-minded, the agreement of the woman's legal representative or the mayor of the locality is required in place of the woman's consent.

In Morocco, the consent of the spouse is required in the case of abortions performed by a physician or surgeon to safeguard the health of the mother; if the practitioner considers that the mother's life is in danger, the permission of the spouse is not required, although in this case the chief medical officer of the prefecture or province must be informed. In the absence of the spouse, or if the latter refuses to give his consent or is prevented from doing so, the physician or surgeon may terminate the pregnancy only on the basis of a written notice by the chief medical officer of the prefecture or province certifying that the health of the mother cannot be safeguarded by any other means.

In the United States, the provision of the Model Penal Code whereby the decision to authorize an abortion should be taken by a hospital board

of three physicians has been adopted in certain States; in other States, e.g. Oregon, the decision is based on the opinion of two physicians. In Alaska, Hawaii and New York, the decision of a single physician is sufficient. The amendments introduced in 1969 to the Canadian Criminal Code provide for a therapeutic abortion committee comprising at least three qualified medical practitioners.

The Turkish Law of 13 January 1960 on medical ethics (which authorized abortion only if it was the sole means of saving the life of the mother) prescribed that, except in emergencies, the operation could be carried out only on the basis of the detailed report of two specialists in gynaecology or, in the absence of the latter, two general practitioners, the written consent of the woman or her guardian being also required. Since the enactment of the Law of 1 April 1965 on family planning and the Regulations for its implementation (which extended the grounds for legal abortion notably as regards medical and eugenic indications), the decision is taken by a committee of three specialists, one of whom is a specialist in obstetrics and gynaecology, chosen by the Ministry of Health and Social Welfare. The operation may not be performed without the written consent of the woman or, if she is a minor, the consent of her parents; if the woman is in the custody of a guardian, the authorization of the Magistrate's Court is necessary (prior consent by the parents or court authorization, as the case may be, are not however required in emergencies). Provision is made for a "Higher Committee on Therapeutic Abortion and Sterilization", to hear appeals against negative decisions.

In Bulgaria, authorization for abortion is given by special boards set up at independent policlinics attached to district, municipal, rayon and national hospitals, higher medical institutes and the Institute for the Specialization and Advanced Training of Physicians (ISUL). Such boards have also been established at the aforesaid hospitals, specialized hospitals for obstetrics and gynaecology, obstetrics and gynaecology clinics of higher medical institutes and the ISUL, and the Scientific Research Institute for Obstetrics and Gynaecology, the boards being required to decide only on abortions on medical indications for patients hospitalized in the establishment concerned. Each board consists of a chairman, who is the assistant chief medical officer of the hospital or the chief medical officer of the policlinic, and two members, one an obstetrician and gynaecologist working in the women's health centre, and the other a medical specialist (the specialty depending on the disease from which the woman is suffering). The board may co-opt or call in consultants, who may be specialists or social workers. In Hungary, authorization is accorded by boards attached to the hospitals or clinics of Departments, towns or wards of towns; each board consists of three members, one a medical practitioner and the other two designated by the executive committee of the competent people's council.

Under the provisions in force in Poland, a pregnant woman wishing to undergo an abortion applies to a physician for the issue of a certificate stating that the termination of the pregnancy is permissible (if

the woman desires an abortion on account of her living conditions, she must submit an attestation concerning these conditions to the physician). Should the physician refuse to grant the certificate authorizing abortion, the woman has the right to present her case to a medical board, consisting of three physicians on the staff of a public health establishment.

In Czechoslovakia, applications for abortion are submitted, either directly by the pregnant woman or through her attending physician, to the head of the department of gynaecology of any hospital with polyclinic in the district. It is then transmitted to the district abortion commission (if the application is rejected, an appeal may be lodged with the regional abortion commission).

In Iceland, the Law of 28 January 1935 specifies that the decision is taken by two physicians, one of whom is the physician in charge of the hospital where the operation is to take place. In Denmark, the granting of special authorization for abortions is the responsibility of committees established within maternity aid institutions (sometimes termed "mothers' aid centres"); each committee is composed of the director of the institution or one of his colleagues with equivalent training, and two physicians. In Norway, the procedure for obtaining authorization is that an application for admission of the woman to hospital is made by a physician, the application being accompanied by a written statement from the woman expressing her wish to have her pregnancy terminated; the authorization is given by two physicians, one of whom, not on the staff of the hospital department where the operation is to be performed, is appointed by the provincial medical officer. In case of refusal, the provincial medical officer may, on the recommendation of the woman's attending physician, apply for her to be admitted to another hospital so that the case may be reconsidered by other physicians. In Sweden, decisions are taken either by a special committee of the National Board of Health and Welfare or by two physicians (one of whom must hold an official or other prescribed post).

Requirement that abortions be performed in approved establishments

Most items of legislation which have legalized abortion do indicate that, except in emergencies, the operation must be performed in hospitals, clinics or departments approved for the purpose. In general, it is a requirement that the woman be admitted to hospital for the operation, although Polish Instructions dated 19 December 1959 did establish procedures for the carrying out of abortions on an out-patient basis, but only in hospitals, out-patient clinics attached to hospitals and other out-patient medical establishments which have the necessary premises at their disposal and fulfil the requirements for the performance of such operations under the strictest conditions of asepsis and antisepsis. It is however specified that abortions on ambulant patients are permitted solely where the operation is justified on account of the difficult living conditions of the woman in question and where the patient's state of health does not require post-operative hospitalization.

In Romania, hospitalization does not appear to have been a requirement prior to the promulgation of the Decree of 29 September 1966; since then, however, admission to a specialized medical establishment has been made obligatory, the operation being performed by a specialist in obstetrics and gynaecology. In Tunisia, legal abortions must be performed in a hospital or an authorized clinic. In the United States of America, the Model Penal Code includes a directive to the effect that abortions should be performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals. In Canada, abortions must be performed in "accredited" or "approved" hospitals. The Abortion Act 1967 of the United Kingdom specifies that, except in emergencies, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Minister of Health or the Secretary of State under the National Health Service Acts, or in a place approved for the purpose by the said Minister or Secretary of State. A similar provision appears in the Medical Termination of Pregnancy Bill submitted to the Indian Parliament; the clause in question states that no termination of pregnancy may be performed other than at a hospital established or maintained by the Government or a place for the time being approved by the Government.

In Bulgaria, a woman who has received authorization for her pregnancy to be terminated is referred to an appropriate hospital service (i.e. the obstetrics and gynaecology department of a hospital, a specialized hospital for obstetrics and gynaecology, the obstetrics and gynaecology clinic at a higher medical institute or the Institute for the Specialization and Advanced Training of Physicians, or the Scientific Research Institute for Obstetrics and Gynaecology), which must perform the operation not less than ten days after having received the authorization. The length of stay in the hospital establishment is determined separately in each individual case and, if it is impossible for the woman to remain for 24 hours, she must be kept under observation at home by the appropriate health centre. Where it is necessary for an abortion to be carried out, on medical grounds, after the 12th week of pregnancy, the operation must be performed only in a highly specialized medical establishment (class 1 district hospital or a municipal hospital of equivalent standing, an obstetrics and gynaecology clinic at a higher medical institute, etc.); if, however, the woman cannot be transported to one of the aforesaid establishments, the operation is performed in a local hospital by a specialist from one of these establishments.

In the Scandinavian countries too, abortions may normally be performed only in State hospitals or other hospital establishments specially approved for the purpose.

Reporting and recording of abortions

It is usually prescribed, in legislation dealing with abortion, that the physician performing the operation is under the obligation to report all cases, i.e. abortions in conformity with the law as well as already

commenced cases which he suspects to be the result of criminal manipulations.

In the United States of America, however, mandatory reporting of abortions is prescribed only in certain of the States.⁵⁶ In Maryland, for example, the abortion law adopted on 25 March 1968 prescribes that the hospital board is required to submit an annual report to the Joint Commission on Accreditation of Hospitals and the State Board of Health, on the number of requests, authorizations granted, abortions performed, and the indications on which authorizations were granted. This information is not privileged but does not indicate the patient's name. In Georgia, a complete file of consultations, consents and certificates of abortion must be filed with the Department of Public Health and in the records of the hospital; failure to comply renders abortion criminal.

In Japan, every physician who has performed operations for abortion or sterilization must submit a monthly report, in which the grounds for the operations are stated, to the competent governor. In France, a record of the decision to authorize a therapeutic abortion, taken by the attending physician and two consultant physicians, must be sent to the Chairman of the Departmental Council of the Association of Physicians with which the two consultants are registered (the name of the woman is not mentioned in the record). In the case of illegal abortions, the attending physician or midwife is required to inform the health authority within 48 hours, the obligation to maintain professional secrecy being waived.

In the United Kingdom, the certificate of opinion expressed by two medical practitioners (in favour of an abortion) must be preserved for three years by the physician performing the operation; the latter must, moreover, send notice of the termination, together with the prescribed information, to the Chief Medical Officer of the Ministry of Health, using the statutory form.

In Switzerland (Canton of Geneva), the association [collège] composed of physicians authorized to issue certificates of assent is required to submit a quarterly report on its activities, indicating the number of certificates issued or refused by each of the authorized physicians, together with the address and origin of each of the women examined.

In Turkey, records must be kept of all cases examined by therapeutic abortion and sterilization committees; all operations and the grounds on which they were carried out must be reported at three-month intervals to the Ministry of Health and Social Welfare. In emergency cases, as defined by Section 5 of the Regulations of 12 June 1967 (serious uterine haemorrhage, uncontrollable toxæmia of pregnancy, diseases threatening the life of the mother, etc.), the physician performing the abortion must notify the provincial directorate of the above-mentioned Ministry (or the medical centres in districts), either prior to the operation or, if this is impossible, within 24 hours thereof; the grounds justifying the operation must be stated.

In Bulgaria, the boards for the authorization of abortions record their decisions in a special register, indicating the name of the woman,

her age and address, the duration of pregnancy, the reason abortion is requested, the decision of the board and the grounds on which it is based, the place to which the pregnant woman is sent for the termination to be performed, etc. The decision must be signed by the three physicians on the board. The register is kept as an official document subject to professional secrecy and the information contained therein may be communicated only to duly authorized persons. The 1968 Instructions in question also contain numerous provisions aimed at combating criminal abortion. Thus, the Treatment and Prophylaxis Administration of the Ministry of Public Health and Social Welfare, the departments of public health and social welfare of the district people's councils, the chief medical officers and directors of the departments of gynaecology and obstetrics of the treatment and prophylactic system, and the directors of social welfare centres are required to look for evidence of criminal activities in all cases where abortion has been initiated or completed outside a treatment establishment and must take a detailed and thorough case history in all such cases. A careful examination must be conducted in every case of abortion and a search made for signs of artificial interruption of pregnancy. Detailed records must be entered in the clinical file, in every case of abortion initiated or completed outside a treatment establishment, at the time of admission of the patient to hospital. If it is suspected, on the basis of the case history, that a criminal abortion has been performed, the medical officer on duty must immediately notify, by telephone, the competent public prosecutor's office or the nearest office of the Ministry of the Interior, the management board of the establishment being required to send a written report to the Ministry of the Interior, the public health department of the district people's council and the social welfare centre. Health workers employed in women's health centres who become aware or find evidence of criminal activities in connexion with abortion, are subject to the same obligation. The public health departments of district people's councils are empowered to close, for a period of up to one year, the private consulting rooms of physicians performing illegal abortions and they may propose to the Ministry of Public Health and Social Welfare that such physicians have their licences to practise suspended for a specified period. Physicians in official posts are liable to various disciplinary measures.

In Hungary, hospital establishments are required to submit periodical reports on abortions performed, while the actual authorizations are attached to the corresponding medical file and retained. The boards responsible for granting authorizations are required to submit annual reports on their activities to the chief medical officer of the Department, the main town of the Department, or the capital.

In Poland, public establishments of the health service, medical boards, and physicians who issue certificates in regard to abortions to be performed outside public establishments of the health service, must keep a register of all the operations carried out. All physicians performing abortions elsewhere than in such public institutions must, without

divulging any professional secrets, keep a card index of all such operations, containing a brief description of each operation, and personal particulars and the address of the woman concerned; individual cards must be retained for ten years. They must, in addition, send a quarterly report on the number of cases performed to the health department of the competent people's council, indicating the cases in which they themselves have established the necessity for the operation and the cases where the decision was taken by other physicians.

In Romania, the same formalities are completed, in obstetrics and gynaecology hospitals and departments, for women who are to undergo an abortion as for other hospitalized patients. A special register is however kept of operations for abortion, as well as a file of "index-cards for interruption of pregnancy". Specialists in obstetrics and gynaecology and surgeons who perform an emergency termination are required to report it, by telephone and in writing, to the public prosecutor of the district or town, either before the operation or no later than 24 hours thereafter. They are moreover obliged to record, on the observation sheet, any findings indicative of induced abortion.

In the Scandinavian countries too, abortions performed by physicians must be reported to the health authorities. In Finland, for example, the Ordinance of 29 May 1970 for the implementation of the Law of 24 March 1970 prescribes that physicians who have performed abortions must notify the State Medical Board within one month; all documents relating to abortion cases must be carefully preserved in the hospital archives on the responsibility of the chief physician of the hospital; in emergency cases, where a licensed physician is entitled to perform an abortion without complying with certain of the prescribed rules, all pertinent documents must be sent, together with the notification, to the State Medical Board. In Norway, the reports relating to authorizations (or refusals thereof) of abortions must be retained by hospitals and clinics for at least ten years and must be sent to the General Directorate of Health or the provincial medical officer, on request. At the end of each year, all hospitals and clinics in which abortions have been performed must send the provincial medical officer a report indicating the total number of terminations (classified according to the indications on the basis of which they were authorized), the number of applications refused, the number of cases authorized or refused which had previously been examined by other physicians, and the number of emergency abortions performed under the prescribed conditions. The provincial medical officer is required to transmit this information annually to the General Directorate of Health, together with information on (a) the total number of applications received for a new examination (i.e. where the initial application has been refused) and the number of acceptances, and (b) the total number of cases which, in accordance with the legal provisions, have been referred to the provincial medical officer, and the number of cases in which he has given his agreement.

*Provisions applicable to non-residents
in countries which have adopted liberal legislation on abortion*

Those countries with liberal abortion laws are faced with the problem of foreign women wishing to take advantage of these laws and often take precautions to ensure they do not become "abortion meccas". An analogous situation may also occur in countries with a federal structure where certain of the constituent units may have more liberal legislation than others. In the USA, Alaska and Hawaii have, for example, imposed minimum residence requirements (30 days and 90 days, respectively). The 1969 Oregon Act applies only to "Oregon residents". In South Australia, prior residence of at least two months is required (although not in emergency cases). In Switzerland, although the interpretation of the legislation may vary from one canton to the other, there are no restrictive measures in regard to Swiss citizens although special provisions applicable to aliens remain in force. Thus, in the Canton of Geneva, the Regulations of 12 December 1953 were amended on 26 January 1960 so as to provide for the establishment of a "Commission de Pré-expertise" responsible for dealing with alien applicants not domiciled in Switzerland or domiciled in the country for less than three months. This commission may itself grant or refuse a certificate of assent or, if the application raises a problem of a medical nature which cannot be immediately resolved, it issues a form to the woman allowing her to consult a physician authorized to issue certificates of assent in the specialty in question. The decision as to whether or not to grant a certificate is then taken by this specialist. In the Canton of Vaud, an Order dated 4 January 1956 (amending the Order of 12 November 1954) prescribes that the physician consulted, with a view to an abortion, by a foreign woman resident in Switzerland for less than three months must immediately report the case to the cantonal medical officer, who refers the matter to the Advisory and Appeals Commission, the latter having sole competence to issue certificates of assent to aliens.

In Bulgaria, the termination of pregnancy in alien women is authorized : 1. when the operation is indicated on medical grounds; 2. where the woman is a citizen of a country with which Bulgaria has signed a health agreement, and there are indications (other than medical) for an abortion; 3. although a foreign citizen, the woman is living or staying in Bulgaria (in this case, the procedure is the same as for Bulgarian citizens). In Hungary and Poland, where the abortion laws are particularly liberal, there seem to be no special provisions applicable to aliens and it may be deduced that no distinction is made in terms of procedure between foreign women and citizens of the country concerned. In Czechoslovakia, the legislation in force makes no distinction between citizens and foreign women who have resided for a long period in the country but is on the other hand rather restrictive as far as other aliens are concerned (abortions may be authorized in such cases only on strictly medical grounds). In addition, the woman must in all cases be warned

that she may be liable to prosecution on her return to her country of origin if the latter does not authorize abortions.

Although the legislation in Sweden theoretically makes no distinction between citizens and foreign women, the latter are in practice very rarely accorded authorizations for abortion. This is due to the fact that it is often impossible, in the case of aliens, to conduct the medico-social investigation required under Swedish law.¹²

The Danish Law of 24 March 1970 does however make an explicit distinction between women domiciled in Denmark (who may undergo an abortion on any of the broad range of grounds specified) and other women (who are permitted to undergo abortions only on medical indications of a serious nature).

Legislation in different areas of the world

AFRICA

Most of the newly independent African states have retained, as far as abortion is concerned, the legislation introduced by the colonial country. The result is that, in most cases, abortion is in practice authorized only when it is necessary to preserve the life of the pregnant woman. In this connexion, Akinla^{3,4} notes that the adoption of more liberal legislation in the United Kingdom in 1967 has not so far influenced the legislation in the English-speaking countries of Africa. These countries continue to follow the provisions governing abortion in the Offences against the Person Act of 1861 (see p. 44).

The same pattern is repeated in the French-speaking countries, where the legislation on abortion frequently remains based on the corresponding provisions of the French Penal Code, Public Health Code and Code of Medical Ethics. In the *Ivory Coast*, for example, Section 36 of Law No. 62-248 of 31 July 1962 establishing a Code of Medical Ethics reproduces the provisions of Section 38 of the French Code of Medical Ethics (analysed on p. 40). The same is true in *Senegal* (Section 35 of the Decree of 10 February 1967). The Penal Code of *Algeria* promulgated by Ordinance No. 66-156 of 8 June 1966 prohibits abortion except where it is essential in order to save the life of the mother and is carried out openly by a physician or surgeon after he has notified the administrative authorities to this effect. Certain countries have however diverged from the French legislation, this being the case with Cameroon, Morocco and Tunisia.

In *Cameroon*, Section 339 of the Penal Code promulgated by the Law of 12 June 1967 prescribes that the penalties imposed in cases of abortion are inapplicable to acts performed by a qualified person and proved necessary to save the mother from serious danger to her health

Moreover, in cases where pregnancy has resulted from rape, an abortion performed by a physician does not constitute an offence provided the facts of the case have been verified by the public prosecutor's office.

A Crown Decree dated 1 July 1967 in *Morocco* repealed the Dahir of 10 July 1939 prohibiting incitement to abortion and birth control propaganda. The Decree also amended Section 453 of the Penal Code which now provides that abortion is not punishable when it constitutes a necessary measure to safeguard the health of the mother and is openly performed by a physician or surgeon with the permission of the spouse. If the practitioner considers that the life of the mother is in danger, this permission is not required; the chief medical officer of the prefecture or province must however be informed. In the absence of the spouse, or if the latter refuses to give his consent or is prevented from doing so, the physician or surgeon may undertake a surgical operation or employ a treatment liable to cause interruption of the pregnancy only subject to a written notice by the chief medical officer of the prefecture or province certifying that the health of the mother cannot be safeguarded except by such treatment.

As regards *Tunisia*, the Law of 1 July 1965 relating to abortion amended Section 214 of the Penal Code (which prescribes penalties for inducing abortions) to permit the artificial interruption of pregnancy when the operation is performed during the first three months and the parents have at least five living children. The operation may likewise be carried out when the health of the mother is endangered by the continuation of the pregnancy. Abortions must be performed in a hospital or an authorized clinic, by a licensed physician.

Ethiopia occupies a distinctive position in that the provisions governing therapeutic abortion in its Penal Code of 23 July 1957 have been modelled on the corresponding provisions of the Swiss Penal Code. The pertinent provisions are contained in Articles 534-536, which are reproduced hereafter :

" 534. *Termination of pregnancy on medical grounds.* (1) Termination of pregnancy is not punishable where it is done to save the pregnant woman from grave and permanent danger to life or health which it is impossible to avert in any other way, provided that it is performed in conformity with the following legal requirements. (2) Except where impossible, the danger shall be diagnosed, and certified in writing, by a registered medical practitioner, after examination of the applicant's state of health. (3) The termination of the pregnancy shall be conditional upon: (a) the findings and concurrent opinion, after a prior period of observation where necessary, of a second doctor qualified as a specialist in the alleged defect of health from which the pregnant woman is suffering, and empowered by the competent authority, either generally or in each specific case, to issue the necessary authorization; and (b) the duly substantiated consent of the pregnant woman, or where she is incapable under the provisions of civil law or on account of her physical condition of giving it, that of her next of kin or legal representative. (4) The doctor terminating the pregnancy cannot evade these conditions by invoking his professional duty (Art. 65); where he terminates the pregnancy without observing the legal safeguards, he becomes liable to the provisions relating to abortion.

.....

536. *Emergencies.* (1) In the case of grave and imminent danger which can be averted only by an immediate intervention, the provisions relating to state of necessity apply (Art. 71). (2) The prior consent of the pregnant woman or, in default thereof, that of her next of kin or legal representative where it is possible to secure it . . . are none the less required in all cases of termination of pregnancy . . . ”

AMERICA

Latin America

Some of the Latin American countries continue to make no provision, either in their Penal Code or in other pertinent legislation, for any cases where the artificial termination of pregnancy is not punishable and hence exclude even the idea of therapeutic abortion. This is, for example, the case in the *Dominican Republic*, where Law No. 1690 of 19 April 1948 concerning abortion (and which introduces a new version of Section 317 of the Penal Code) provides for no exemptions to the prohibition on abortion. The same is true in *Colombia*, where Section 10 of the Code of Medical Ethics promulgated by the Decree of 23 September 1954 specifies that physicians must not prescribe or commit any act, whatever the purpose, which is likely directly or deliberately to destroy human life, such as abortion, euthanasia and contraception. The Colombian Penal Code, promulgated by a Decree dated 14 September 1936, prescribes however, in Section 389, that where an abortion has been performed to safeguard the life of the woman (mother, spouse, direct female offspring, adopted daughter or sister), the normal penalty may be reduced by one-half to two-thirds or a free pardon may even be granted.

Many of the Latin American countries do, however, authorize abortions, particularly where it is a matter of safeguarding the life or health of the mother and in cases where pregnancy is the result of a criminal act (notably rape). No provision is made for eugenic indications (except in Cuba), medico-social indications or social indications (except in Uruguay, in some measure). Thus in *Argentina*, Section 86 of the Penal Code, as most recently amended by a Law dated 6 December 1967, specifies that abortion practised by a licensed physician with the consent of the pregnant woman is not punishable : 1. if it is carried out to prevent a serious danger to the life or health of the mother and the danger cannot be otherwise averted; 2. if the pregnancy is the result of rape in respect of which criminal proceedings have been initiated (if the victim of the rape is a minor or is insane or demented, the consent of the woman's legal representative is required).

In *Brazil*, Decree-Law No. 2848 of 7 December 1940 prescribes that abortion performed by a physician is not a crime : 1. if it is the sole method of saving the life of the woman; 2. if the pregnancy was the result of rape, provided that the operation is performed with the consent of the woman or, if she is incapacitated, of her legal representative. Accord-

ing to Rodrigues-Lima,⁹² the decision to authorize a therapeutic abortion can be made only by a committee of three physicians, called into conference by the attending physician. A written statement must be drawn up and signed by the three members of the committee. In emergencies, the attending physician may however perform an abortion at his own discretion, but is required to file a confidential report with the competent regional Council of Medicine.

The Sanitary Code of *Chile*, promulgated by a Decree dated 11 December 1967, prescribes that a pregnancy may be interrupted only for therapeutic purposes, the documented opinion of two physicians being necessary in order for the operation to be carried out.^a The estimated therapeutic abortion rate in Santiago is only one per 5000 deliveries.¹¹¹ In *Costa Rica*, Section 199 of the Penal Code of 21 August 1941 specifies that an abortion performed by a physician is not punishable if it is carried out in order to prevent a danger to the life or health of the mother, and the danger cannot be otherwise averted; two other physicians must have been consulted beforehand. The Social Defence Code of *Cuba*, which came into force on 10 October 1938, lays down that no criminal responsibility is incurred where an abortion is performed in order to save the life of the mother or to prevent serious damage to her health, where the pregnancy is the result of certain crimes (notably rape), or where the purpose is to prevent the transmission to the fetus of a hereditary or serious contagious disease. Section 423 of the Penal Code of *Ecuador* of 22 March 1938 provides that abortion performed by a physician, with the consent of the pregnant woman (or that of her husband or close relatives, if she herself is incapable of giving consent), is not punishable : 1. if it is carried out to prevent a danger to the life or health of the mother and the danger cannot be otherwise averted; and 2. if the pregnancy is the result of rape or illegal sexual relations with a woman who is insane or demented (the consent of the woman's legal representative is required in the latter case).

In *Honduras*, the Fundamental Law concerning the Association of Physicians, enacted by a Decree dated 25 June 1964, prohibits the physician from interrupting a pregnancy at any stage whatever, except for therapeutic reasons. The written consent of the woman, her husband or nearest relative is required, and a medical commission must confirm the absolute necessity for the operation, and issue a written certificate to this effect. Moreover, an abortion may not be performed unless all methods for preserving the health of the mother and which do not endanger the life of the fetus have been attempted without success.

Section 333 of the Penal Code of *Mexico* of 13 August 1931 prescribes that abortion performed in cases of rape is not punishable; it is also laid down, in Section 334, that no penalty is imposed where the physician attending the pregnant woman performs an abortion after forming the opinion that continuation of the pregnancy is liable to endanger the woman's

^a A bill which would allow abortion on socio-economic and ethical grounds has been submitted to the Chilean House of Representatives but, according to Avendaño,⁸ its adoption seems rather doubtful.

life (except in emergencies, the opinion of another physician must, if possible, be sought). Under the terms of Section 352 of the Penal Code of *Paraguay* of 18 June 1914, no liability is incurred by physicians performing an abortion where the life of the pregnant woman would be endangered by the continuation of pregnancy or by childbirth.

In *Peru*, the Sanitary Code promulgated by a Decree-Law dated 18 March 1969 lays down that therapeutic abortion is permitted only where there exists incontrovertible proof of injury to health liable to cause the death of the product of conception or the mother, and two physicians attending the case have pronounced themselves in favour of the operation. The Code specifically prohibits abortion based on ethical, social or economic considerations, and also as a method of birth control.

In *Uruguay*, Section 328 of the Penal Code (as amended by Law No. 9763 of 24 January 1938) deals with extenuating circumstances and exemptions from punishment in cases of abortion. It lays down that : 1. if the offence was performed to safeguard the honour of the woman or that of her spouse or a close relative, the penalty is reduced by one-third to one-half; the judge may totally exempt the parties concerned from punishment in the case of abortion performed with consent, after an examination of the circumstances of the case; 2. if the abortion is performed without the consent of the woman in order to terminate a pregnancy resulting from rape, the penalty is reduced by one-third to one-half, no penalty being imposed if the operation is carried out with the woman's consent; 3. if the abortion is performed without the consent of the woman, on account of a serious danger to health, the penalty is reduced by one-third to one-half while if it is carried out with her consent or in order to save her life, the penalty may even be totally waived; 4. in cases where an abortion is performed without the woman's consent, for reasons of serious economic difficulty [*angustia económica*], the judge may reduce the penalty by one-third to one-half, while where an abortion is performed on such grounds with the woman's consent, the penalty may even be totally waived; 5. the reduction of the penalty and the total exemption therefrom referred to above apply only if the abortion is performed by a physician during the first three months of pregnancy (this time limit does not apply in cases covered by item 3 above).

Finally, Section 435 of the Penal Code of *Venezuela*, promulgated by a Decree dated 22 June 1964, contains a clause according to which no liability is incurred by a physician who induces an abortion where this is essential in order to save the life of the woman.

United States of America

The number of studies and papers on the problem of abortion in the USA has attained considerable proportions and will no doubt continue to grow in the coming months in view of the rapid changes in the legislation being introduced in an ever-increasing number of States. Extreme opinions have been expressed on the question, the most radical stand-

point being that which aims at the outright repeal of all restrictive abortion statutes.^{59,81,114} The most recent tendency is to leave the matter entirely to the physician and the pregnant woman. Abortion laws based on this principle have in fact now been adopted in Alaska, Hawaii and New York.

In a recent historical survey of abortion laws in the USA, Lucas⁶³ points out that at the time of ratification of the United States Constitution and for several decades thereafter there was no legal prohibition against termination of pregnancy before quickening. Towards the middle third of the 19th century a change of attitude occurred, apparently occasioned largely by the need to combat the "back-street abortionist" and the dangers of any form of surgery at the time.⁶⁴ Four States, Louisiana, Massachusetts, New Jersey, and Pennsylvania, originally enacted no exceptions to the prohibition on abortion at any stage of pregnancy. Until recently, abortion was permissible in 46 States and the District of Columbia if it was necessary to preserve or save the life of the mother. In certain of these States, abortion was also permissible to "prevent serious and permanent bodily injury" (Colorado and New Mexico) or to protect the health of the mother (District of Columbia and Alabama). Lucas points out, however, that neither the statutes nor case law have provided exact definitions of such expressions as "preserve the life" and "health".

An important role in the reform of the abortion laws was played by the Model Penal Code provisions on abortion, put forward by the American Law Institute in 1959⁸⁹ and later, in somewhat modified form, in 1962.³⁴ These provisions would permit abortion to be performed (by a physician) where (1) there is a danger to the physical or mental health of the woman, (2) the pregnancy was caused by rape or incest, and (3) where there is a probability that the child-to-be will be mentally retarded or physically deformed. In 1967, the American Medical Association⁵ adopted a policy on therapeutic abortion based on the above-mentioned provisions of the Model Penal Code. The first State to adopt a statute based on these provisions was Colorado (where the bill in question was signed into law on 25 April 1967).^{61,103} Thereafter, several other States, including California, North Carolina, Maryland, Kansas and Georgia, adopted similar statutes with, however, diverse variations from the text of the Model Penal Code, e.g. in regard to the indications for abortion or the actual wording of the substantive provisions.⁵⁶ Thus, in California, the Therapeutic Abortion Act of 1967 does not provide for fetal (eugenic) indications for therapeutic abortion. The medical indication applies where "there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother". Although a definition is given of the term "mental health" as used in this context, it is reported by Overstreet⁸⁵ that the precise interpretation to be given to this clause is still causing considerable difficulties.

In order to prevent their States becoming "abortion mills" or "abortion meccas", certain States, e.g. Arkansas, North Carolina and

Georgia, have imposed a residence requirement upon patients otherwise eligible for a therapeutic abortion. The minimum period of residence in Arkansas and North Carolina is four months whereas in Georgia the patient is required to be a "*bona fide* legal resident". Although the Colorado law imposes no residence requirement, the *de facto* situation is that "few nonresidents are being accepted for abortions in Colorado hospitals".¹⁰³ The total number of legal abortions in Colorado in 1968 was in fact only 476.³⁶

A gestational time limit for therapeutic abortions is prescribed in certain States. In California, for example, an abortion may not be performed after the 20th week of pregnancy. In Colorado, a time limit (16 weeks) is imposed only where the pregnancy is due to rape or incest. In a number of States (e.g. Delaware), the time limit does not apply where the mother's life is in danger or where the fetus is dead. Other States (e.g. Georgia and Kansas) impose no statutory gestational time limit for therapeutic abortions.

As far as the procedure for obtaining authorization is concerned, several States have adopted the Model Penal Code clause specifying that final approval should be granted by a specially designated hospital board or committee. In Colorado, the unanimous recommendation of a hospital board consisting of at least three physicians is required. The California Act specifies that the committee must consist of at least two physicians, except where the proposed termination will occur after the 13th week of pregnancy, in which case the committee must comprise at least three physicians. Unanimous consent is required where the committee has no more than three members.

In other States, e.g. Kansas and North Carolina, three licensed physicians must certify the grounds for abortion in writing, the certificate being filed with the hospital in which the operation is to be performed.

The provisions of the above statutes dealing with the establishments in which abortions may be performed and the reporting of therapeutic abortions are dealt with elsewhere (see pp. 17 and 18).

In a recently published paper, Overstreet⁸⁴ has estimated that the total number of therapeutic abortions authorized in California is likely to be about 4100 per year. (The actual figures for 1968, reported by Russell and Jackson,⁹⁷ are as follows: 5488 applications; 5045 cases approved by hospital abortion committees; 4865 abortions actually performed). These figures are in sharp contrast with Fox's estimate of 100,000 criminal abortions annually in California, made on the basis of a 1966 study of abortion deaths in that State.³⁰ Overstreet^{84,85} considers that the 1967 enactment is unsatisfactory in that it has had virtually no effect in reducing criminal abortion and points out that, as a consequence, the trend in favour of further liberalization and, in particular, the repeal of all abortion statutes, is becoming increasingly strong.

A number of States have in the course of 1969 and 1970 adopted abortion laws which are in fact more liberal than those based on the Model Penal Code. The statute adopted in 1969 in Oregon is of particular interest in that it provides for medico-social indications (as well

as purely medical, eugenic and ethical indications). In determining whether or not there is substantial risk that continuance of the pregnancy will greatly impair the physical or mental health of the mother, the physician may take into account "the mother's total environment, actual or reasonably foreseeable". The similarity between this provision (based on a recommendation of the American College of Obstetricians and Gynecologists) and the corresponding provision in the British Abortion Act of 1967 is obvious. Even more radical, however, are the abortion statutes adopted by New York, Alaska and Hawaii (a similar statute has been passed by the Senate and House of the State of Washington and was to be submitted to popular vote in November 1970). The New York Act, which came into effect on 1 July 1970, states simply that "an abortifacient act is justifiable when committed upon a female with her consent by a duly licensed physician acting (a) under a reasonable belief that such is necessary to preserve her life, or, (b) within twenty-four weeks from the commencement of her pregnancy. . . ." The practical scope of the statute has however been somewhat less than the provisions would suggest, notably on account of sets of guidelines issued by the State health department (for the 57 counties outside New York City) and the State medical society. Guidelines⁶⁹ which would certainly limit the scope of the statute have also been proposed for New York City.^a

The Alaska statute authorizes abortion (defined as "an operation or procedure to terminate the pregnancy of a nonviable fetus") provided it is performed by a licensed physician or surgeon, in an approved hospital or other facility, or a federally operated hospital. Consent must have been received from the parent or guardian of an unmarried woman less than 18 years of age. The woman must have been domiciled or physically present in the State for 30 days before the abortion. Regulations defining standards for facilities, equipment and patient care, standards of professional competency, etc., in connexion with abortions are to be laid down by the State Medical Board.

The definition of abortion in the Hawaii Act, which became law on 11 March 1970, is similar to that in Alaska. The Act provides that abortions are legal provided they are performed by a licensed physician or surgeon or a licensed osteopathic physician or surgeon, in a hospital licensed by the Department of Health or a federally operated hospital. The woman must have been domiciled or physically present in the State for at least 90 days immediately preceding the abortion.

No doubt reflecting the more liberal attitudes towards abortion as manifested in these statutes, the American Medical Association has now agreed on more liberal guidelines to govern the attitude of physicians to abortion. A resolution^b passed by the AMA House of Delegates meeting in Chicago in June 1970 indicates simply that "abortions should be performed only by a licensed doctor in an accredited hospital

^a These guidelines, which deal *inter alia* with the types of medical facilities in which abortions may be performed and the conditions under which abortions on an ambulatory basis are or are not permitted, were expected to come into effect in October 1970.

^b For the full text of the resolution, see *J. Amer. med. Ass.*, 1970, 213, 359.

in conformity with good medical practice and state law. The sole provisos are that two doctors must agree in writing to the abortion, and that no person or hospital should be required to perform any act in violation of personal medical judgement or ethics".⁷⁸

This survey would be incomplete without mentioning the recent court decisions declaring State abortion laws unconstitutional.⁸⁷ Specific mention should be made of the *People v. Belous* (1969)⁸¹ and *People v. Barksdale* (1970) cases in California, the *Babbitz v. McCann et al.* case in Wisconsin (1970) and the *United States v. Vuitch* case in the District of Columbia (1969).^a Goldmark states that the ruling in the latter case, which left the District of Columbia with no abortion law, is likely to come before the United States Supreme Court and that if the ruling is upheld, "all abortion laws in the 50 states and the District of Columbia will be declared unconstitutional and the American woman will be liberated from the chains of unwanted pregnancy".³⁶

Canada

As pointed out by Lederman,⁶² the English Offences against the Person Act of 1861 prohibited the "unlawful" procurement of abortion whereas the corresponding section (237) of the Criminal Code of Canada of 1953-54 (until its amendment by the Criminal Law Amendment Act, 1968-69) did not provide, either explicitly or implicitly, for any cases where abortion was lawful. Accordingly, there were no grounds for considering the precedent established by the court ruling in the celebrated *Rex v. Bourne* case as being applicable in Canada and, as Lederman states, there was no "legal sanction for abortion upon therapeutic grounds", although in practice the law enforcement authorities did not prosecute a physician performing an abortion on sound medical grounds, confirmed by his colleagues. According to data reported by Katz in 1968,⁵⁷ the number of criminal abortions in Canada was estimated at 50 000 per year.

A radical reform occurred in 1969 with the enactment of the Criminal Law Amendment Act, 1968-69. Section 18 of this Act amends Section 237 of the Criminal Code by the incorporation of provisions specifying that the prohibition of the procurement of miscarriage (under sub-sections 1 and 2) does not apply to a qualified medical practitioner (other than a member of a therapeutic abortion committee of a hospital) who in good faith performs an abortion in an accredited or approved hospital, provided that the therapeutic abortion committee of the hospital has reviewed the case and has, by a majority vote, certified in writing that the continuation of the pregnancy of the woman concerned "would or would be likely to endanger her life or health". Definitions

^a The basic grounds on which particular State abortion laws have been declared unconstitutional are as follows: (a) such phrases as "necessary to preserve her [the woman's] life" or "necessary for the preservation of the mother's life or health" are unconstitutionally vague; (b) the fundamental right of the woman to choose whether to bear children is a right of privacy which the statutes in question abridge; (c) insofar as decision-making power is delegated to a directly involved individual, the Fourteenth Amendment to the United States Constitution is violated.

are of course given of "accredited hospital" and "approved hospital", as well as "qualified medical practitioner" (defined merely as a person entitled to engage in the practice of medicine under the laws of the province in which the hospital in question is situated) and "therapeutic abortion committee" (such committees are composed of at least three qualified medical practitioners, appointed by the board of the hospital). The consent of the interested party is required.

In a comment on these provisions, the Canadian Justice Minister pointed out in the House of Commons that the new law "imposes no duty on the board of a hospital to set up a therapeutic abortion committee. It imposes no duty on any medical practitioner to perform an abortion. It imposes no duty even to initiate an application on behalf of a patient".¹¹²

An editorial in the *Canadian Medical Association Journal* in August 1970¹⁹ indicates that the adoption of the new legislation by no means ended controversy on the question of legal abortion in Canada, notably because "the present law is open to wide variation of interpretation and, as a result, inequities abound". The Canadian Psychiatric Association, at its annual convention in Winnipeg in June 1970, took a significant step in adopting the position that the matter of termination of pregnancy should be removed from the Criminal Code, and hence became the first Canadian medical body to go on record "in favour of abortion becoming strictly a medical procedure to be decided by the woman and her husband, if she has one, along with the physician". This step was, it is stated, taken "after an appraisal of the ineffectiveness of the current legislation in enabling physicians to deal with this area of human suffering".¹⁹

It is pertinent in this context to mention that the revised Code of Ethics for the Canadian medical profession, which is expected to go into effect in the near future, omits any reference to abortion whereas the earlier Code had referred to it as a "violation of the moral law and the Criminal Code of Canada".¹⁸ In explaining this omission, the chairman of the committee responsible for the drafting of the new Code stated that "We have not mentioned abortion because we consider it to be like any other surgical operation".

ASIA

In most of the Asian countries for which information is available (and in particular the countries formerly under colonial rule), the legislation on abortion is highly restrictive, abortion being a punishable offence except where performed to save the mother's life. A fundamentally different policy has however been adopted in Japan, with the promulgation in 1948 of the Eugenic Protection Law, and is currently envisaged in India, where "The Medical Termination of Pregnancy Bill" was submitted to Parliament in 1969. A liberal Abortion Act was moreover adopted in Singapore in 1969.

In *Cambodia*, Section 459 of the Penal Code promulgated by the Crown Ordinance of 23 July 1934 prescribes that abortion is not punishable where it constitutes a necessary measure to save the life of the mother and is performed by a qualified physician after the authorities of the commune have been notified. In contrast, the 1953 Penal Code of the *Republic of Korea* makes no provision for any exceptions to the prohibition on abortion.^a Section 269 of this Code prescribes penalties both in the case of a woman procuring her own miscarriage by the use of drugs or other means and in the case of a person procuring the miscarriage of a woman. Section 270 imposes more severe penalties where the person procuring the abortion is a physician, midwife or pharmacist, and, in addition, the person's professional licence may be temporarily suspended.

In *Pakistan*, the situation is the same as in the United Kingdom before 1967, Section 312 of the Penal Code of 1860 providing for no exceptions to the general prohibition of abortion other than to save the mother's life. According to Awan,⁹ however, it would appear that, in spite of the strictness of the law, a considerable number of married women have recourse to illegal abortion, probably for social and economic reasons.

The Penal Code of *Thailand*, promulgated by an Act dated 13 November 1956, prescribes (in Section 305) that an abortion performed by a physician is not an offence where the operation is necessary to safeguard the woman's health or where the woman is pregnant as a consequence of a criminal offence (rape, sexual intercourse with a female who is not more than 13 years of age, seduction of a female who is not more than 18 years of age, etc.). The actual number of therapeutic abortions in Thailand is, however, extremely small.⁹⁴

India

In India, as in Pakistan, abortion has continued to be governed by the provisions of Section 312 of the Penal Code of 1860 until the present time; this Section prescribes that "whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished . . ."; the penalties are more severe after "quickening", i.e. the stage at which the movements of the fetus become perceptible. In spite of the repressive character of this legislation, it is probable, according to Chandrasekhar,²⁰ that the total number of induced abortions in the country is of the order of five million, more than 90 % of the women involved being married. Faced with this situation, and to deal with the inherent dangers of the practice of illegal abortion, the Central Family Planning Board of the Government of India proposed, in 1964, the formation of a committee to deal with the problem of abortion in all its

^a Other legislation does, however, appear to permit abortion where the mother's life is in danger. Moreover, a draft Maternal and Child Health Law, which would authorize abortions on medical, eugenic, ethical and medico-social indications, has been submitted to the National Assembly.

aspects, legal, medical, moral and social. The Committee was established soon thereafter and, at the end of 1966, submitted recommendations for a liberalization of the existing abortion law.³⁷ The outcome of this was that in 1969 a bill entitled "The Medical Termination of Pregnancy Bill, 1969" was introduced in the Indian Parliament.

This Bill provides for significant exemptions from the provisions of the Penal Code and specifies that a pregnancy may be terminated by a medical practitioner, where the length of the pregnancy does not exceed 12 weeks, or by two medical practitioners, acting together, where the length of the pregnancy exceeds 12 weeks but does not exceed 20 weeks, provided that the medical practitioner or practitioners are of the opinion that : (i) the continuance of the pregnancy would involve a risk to the life of the pregnancy woman or an injury to her physical or mental health; or (ii) there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. Explanatory notes indicate two cases where continued pregnancy is assumed to constitute a grave injury to the mental health of the pregnant woman, i.e. (1) where a pregnancy is alleged by a pregnant woman to have been caused by rape, and (2) where the pregnancy occurs as a result of failure of any device used by a married woman or her husband for the purpose of limiting the number of children (this latter provision constitutes an innovation which clearly gives a very broad interpretation to the concept of potential injury to the mental health of the pregnant woman). Moreover, in determining whether the continuance of a pregnancy would involve a risk to the physical or mental health of the pregnant woman, account may be taken of the pregnant woman's actual or reasonably foreseeable environment. This provision reproduces a provision of the United Kingdom Abortion Act of 1967 and hence introduces the concept of medico-social indications. Under the terms of the Bill, no abortion may be performed other than at a Government hospital, or in "a place for the time being approved for the purpose" by the Government. Support for this Bill appears to have been less than unanimous, and a number of serious objections have recently been put forward by Bose.¹³ Moreover, the Indian Medical Association is urging caution on the Government in amending existing legislation, notably on account of the insufficiency of personnel and hospital facilities.⁵⁴

Japan

In Japan, the provisions concerning abortion are contained in the Eugenic Protection Law of 13 July 1948, as amended (most recently on 21 April 1960). This Law replaced the National Eugenic Law of 1940, which included highly restrictive provisions on induced abortion.⁷⁵ Between 1949 and 1955 the number of abortions officially reported to the authorities increased steadily, from 246 104 to 1 170 143.⁷⁷ Since 1955, however, a gradual diminution in the number of legal abortions has been observed. According to Muramatsu, the most recent figures do not reflect the real situation on account of a current tendency among

physicians not to report abortions. In order to obtain a more accurate estimate of the real number of induced abortions in Japan, the official number should be multiplied by a factor of 1.6-2.0.⁷⁶ Muramatsu also points out that, as might be expected, the majority of abortions are performed for reasons which are not related to the health of the woman.

In its present version, the Eugenic Protection Law shows a number of distinctive characteristics, notably the fact that it commences with a chapter devoted to the "eugenic operation". The latter, defined as the surgical operation rendering a person incapable of reproduction without removing the reproductive organs, may be performed at the discretion of the physician in the following cases : 1. if the person concerned or the spouse suffers from hereditary psychopathy, hereditary somatic disease or hereditary malformation, or if the spouse suffers from mental disease or is mentally deficient; 2. if the person concerned or the spouse has a relative within the 4th degree of consanguinity who suffers from hereditary mental disease, hereditary mental deficiency, hereditary psychopathy, hereditary somatic disease or hereditary malformation; 3. if the person in question or the spouse suffers from leprosy, which is liable to be transmitted to the descendants; 4. if the life of the mother would be endangered by conception or by delivery; 5. if the mother already has several children and her state of health seems to be seriously affected by each delivery. In the cases mentioned in items 4 and 5, the operation may also be carried out on the spouse.

The physician must apply to the competent Eugenic Protection Commission for an enquiry as to the propriety of carrying out the eugenic operation, if he finds that it is necessary in the public interest in order to prevent hereditary transmission of one of the diseases included in the Annex to the Law, viz. :

1. Hereditary psychosis : schizophrenia, manic-depressive psychosis, epilepsy;
2. Hereditary mental deficiency;
3. Severe hereditary psychopathy : marked abnormal sexual desire, marked criminal inclination;
4. Severe physical illness : chronic progressive chorea, hereditary spinal ataxia, hereditary cerebellar ataxia, progressive muscular atrophy, progressive muscular dystrophy, myotonia, congenital muscular atony, congenital cartilaginous deformity, leukosis, ichthyosis, multiple neurofibroma, atherosclerosis, congenital epidermolysis bullosa, congenital porphyria, congenital keratoma palmare et plantare, hereditary atrophy of the optic nerve, retinitis pigmentosa, achromatopsia, congenital nystagmus, blue sclera, hereditary dysacusis or deafness, haemophilia;
5. Severe hereditary deformity : deformity of hand, deformity of foot, congenital bone deformity.

The provisions governing the artificial interruption of pregnancy are contained in Section 14 of the Law, which prescribes that :

"(1) The physician designated by the Medical Association, which is a body corporate established in the prefectural district (hereinafter called the "designated physician"), may carry out the operation for interruption of pregnancy, at his discretion, in the case of persons subject to the provisions of any of the following items, with the consent of the person in question and the spouse :

1. a person or his spouse, who suffers from psychosis, mental deficiency, psychopathy, hereditary somatic disease or hereditary malformation;

2. a relative in blood within the 4th degree of consanguinity of a person or his spouse who suffers from hereditary psychosis, hereditary mental deficiency, hereditary psychopathy, hereditary somatic disease or hereditary malformation;
3. a person or his spouse who is suffering from leprosy;
4. a mother whose health may be affected seriously by the continuation of pregnancy or by delivery, from the physical or economic viewpoint;
5. a person who has conceived as the result of an act of violence or a threat or while unable to resist or refuse.

(2) With reference to the consent mentioned in the preceding sub-section, the sole consent of the person in question shall suffice if the spouse cannot be located, or fails to declare his intentions, or dies after conception has occurred.

(3) If the person who is to undergo the operation for artificial interruption of pregnancy is insane or feeble-minded, the consent of the person under obligation to protect another pursuant to Section 20 of the Mental Hygiene Law (where the guardian, the spouse, the person having parental authority or the person under the obligation to protect another becomes the protecting person) or Section 21 of the same Law (where the Mayor of the city, town or village becomes the person under obligation to provide protection) may be regarded as that of the person in question."

Chapter V of the Law provides for the establishment of Eugenic Protection Consultation Offices, whose task is to advise on matters dealing with eugenic protection and, in particular, to popularize and give guidance as to effective methods of contraception. Each such Office must have on its staff a physician with the qualifications prescribed by the Minister of Health and Welfare and must be provided with the equipment necessary for carrying out examinations, etc. Every physician who performs a eugenic operation or induces an abortion must make a report to the competent authority; such reports are submitted monthly, the grounds for each operation being indicated.

Singapore

In Singapore, where abortion was previously permitted, under the terms of Section 312 of the Penal Code of 16 September 1872, only to safeguard the life of the mother, the procedure for authorizing abortion has been liberalized with the promulgation of the Abortion Act, 1969, which came into force on 20 March 1970.

Under the provisions of this new Act, the termination of a pregnancy by a registered medical practitioner acting under an authorization granted by the Termination of Pregnancy Authorisation Board does not constitute an offence. The Board is composed of the Director of Medical Services (who acts as Chairman), the Deputy Director of Medical Services (Health), the Deputy Director of Medical Services (Hospitals), an obstetrician and gynaecologist employed in the public service, a psychiatrist employed in the public service, the Director of Social Welfare, and five other members to be appointed by the Minister of Health. The Board is given the authority to appoint committees to which it may delegate specific functions and powers.

The Termination of Pregnancy Authorisation Board may authorize treatment to terminate pregnancy if it is of the opinion : (a) that the

continuance of the pregnancy would involve serious risk to the life of the pregnant woman or serious injury to her physical or mental health; (b) that the environment of the pregnant woman, both at the time when the child would be born and thereafter so far as is foreseeable, justifies the termination of her pregnancy (the expression "environment" includes family and financial circumstances of the pregnant woman); (c) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped; or (d) that the pregnancy is the result of rape, incest, illegal sexual relations or intercourse with an insane or feeble-minded person. In addition, and notwithstanding the above provisions, a registered medical practitioner, acting in consultation with another registered medical practitioner, is not guilty of an offence where a pregnancy is terminated by him, if both practitioners are of the opinion, formed in good faith, that the termination of pregnancy is necessary on the grounds mentioned in item (a) above; in such cases the pregnancy may be terminated without the authorization of the Board, provided the treatment is carried out in a Government hospital or in an approved institution and the registered medical practitioners send to the Board, within 14 days, a statement of the medical reasons which in their opinion made the termination of pregnancy permissible.

In general, all abortions must be performed in a Government hospital or in an approved institution, except where the registered medical practitioner performs the necessary treatment after having formed the opinion that it is immediately necessary to save the life of the pregnant woman, in which case he must send to the Board, within 14 days, a statement of the medical reasons which in his opinion made such treatment immediately necessary.

Except as an emergency measure intended to save the life of the pregnant woman, no abortion may be authorized unless the pregnant woman is a citizen of Singapore, or is the wife of a citizen of Singapore, or unless she has been resident in Singapore for a period of at least four months immediately preceding the date on which the treatment is to be carried out.

The Board does not authorize abortions : (a) on the grounds provided for in items (a) and (c) above, if the pregnancy is of more than 24 weeks' duration, unless it is immediately necessary to save the life of the woman or to prevent grave permanent injury to her physical or mental health; or (b) on the grounds provided for in items (b) and (d) above, if the pregnancy is of more than 16 weeks' duration.

Except for those cases where the authorization of the Board is not required, every pregnant woman wishing to have her pregnancy terminated must apply to the Board for the appropriate authorization. Before applying to the Board, the pregnant woman must arrange to be medically examined by a registered medical practitioner of her own choice or appointed by the Board for the purpose. If after examining the case (application form, medical certificate and other documents in support of the application), the Board decides not to grant the application, it

must immediately inform the applicant in writing of the reasons for its decision. The pregnant woman is not entitled to appeal against the decision of the Board although she may request the Board to reconsider its decision. In this case, the Board refers the matter to the registered medical practitioner who issued the medical certificate accompanying the woman's application form, and requires him to send a further medical certificate as to the applicant's state of health or environment, as the case may be, and to report on any fresh evidence that may be available. The Board thereafter proceeds in the same way as for original applications.

The Board may not grant any application for treatment to terminate pregnancy unless it is in the possession of the written consent of the applicant to such treatment. Such consent is given: (a) in the case of applicants over 18 years or under 18 years of age if married, by the applicant herself; and (b) in the case of an unmarried applicant under 18 years of age, by the parent or parents, if living, or the guardian of the applicant if there is no parent living. If there is no parent or guardian of an applicant under 18 years of age, the Board may itself give consent for treatment. An applicant may withdraw her consent at any time before the abortion is carried out, although she must in this case immediately advise the Board of her decision. Where the applicant is so insane or so feeble-minded as to be incapable of giving a valid consent, the Board alone may decide whether good reason exists for treatment to terminate pregnancy; before deciding to authorize such treatment, however, the Board must consult the husband of the applicant or, if she is unmarried, the parent or guardian of the applicant (where there is no such husband, parent or guardian, the Board may authorize treatment without any consultation).

Except in cases where abortion is performed on medical grounds in a Government hospital or an approved institution, or as an emergency measure to save the life of the pregnant woman, treatment to terminate pregnancy may be carried out only by a registered medical practitioner who is in possession of the prescribed surgical or obstetric qualifications (the latter are specified in the Abortion Regulations, 1970) or has acquired special skill in such treatment, either in practice or by virtue of holding an appointment in a Government hospital or in an approved institution for a prescribed period (the latter period is fixed at six months under the terms of the Abortion Regulations, 1970). Nothing in the Act is intended to prevent the registered medical practitioner who issued the medical certificate certifying the need or desirability of treatment to terminate pregnancy, from himself carrying out such treatment in a Government hospital or in an approved institution, provided he has the qualifications or experience required.

Middle East

Most of the countries of the Middle East have, according to Nazer,^{79,80} adopted repressive legislation on the subject of abortion. The laws in question are, however, rarely enforced in a strict manner

in practice, and many illegal abortions are in fact performed by physicians in hospitals and private clinics.

In *Iran*, abortion is permitted only where it is necessary to save the life of the woman. In practice, three physicians are required to certify that continuation of pregnancy is dangerous to the woman's health.⁹⁴ In *Syria* too, the termination of pregnancy for the purpose of saving the life of the pregnant woman is permitted; Section 8 of Legislative Decree No. 96 of 26 September 1962 regulating the practice of medicine prescribes that at least two physicians must have knowledge of the abortion, a report justifying its necessity being drawn up before the operation. In *Jordan* and *Lebanon*, there are no cases in which abortion is authorized; provision is however made for extenuating circumstances, as where an abortion is performed to preserve the reputation of the woman and the honour of the family.

As noted by Bachi,¹⁰ the regulations governing abortion in Palestine under the British Mandate were extremely rigid and reminiscent of the Offences against the Person Act of 1861 (see p. 44); few cases of criminal abortion were however actually brought before the courts. In *Israel*, the legal position governing abortion underwent a significant change in 1952, when the Haifa District Court declared that induced abortion for *bona fide* medical grounds is permissible if performed without concealment. Instructions (later repealed) were issued to the police by the Attorney-General advising them not to prosecute ordinary cases of induced abortion. More recently, the penalties for illegal abortion have been relaxed (no penalty is imposed on a woman procuring her own abortion). It would appear that, in practice, abortions are comparatively easy to obtain and are frequently resorted to, particularly by women who already have more than 2-3 children. It also seems that abortion is less frequent amongst the Arab population. Bachi reports that, particularly on account of the discrepancy between written law and actual practice, proposals have been advanced with a view to changing the legal situation.

WESTERN AND SOUTHERN EUROPE ^a

Until recently, the countries of Western and Southern Europe followed a generally similar approach to the question of induced abortion, the basic principle being that such abortions were either considered absolutely illegal or were exceptionally authorized to save the life (or, in some cases, the health) of the mother. In Switzerland, however, the interpretation at the cantonal level of the provisions of Article 120 of the (Federal) Penal Code has enabled this strict principle to be applied with varying degrees of flexibility in certain cantons. More liberal policies have moreover been adopted in Turkey, where the Family Planning

^a Including Turkey.

Law of 1 April 1965, and the Regulations of 12 June 1967 for its implementation, introduced less stringent conditions for abortion on medical grounds and legalized abortion on eugenic grounds as well as sterilization, and in the United Kingdom, with the adoption of the Abortion Act 1967 which extended the grounds for legal abortion to cover eugenic and medico-social indications.

Notwithstanding these developments, the legislation on abortion in most of the countries of this area, i.e. Austria, Belgium, the Federal Republic of Germany, France, Greece, Ireland, Italy, the Netherlands, Portugal and Spain, continues to be highly restrictive. However, a tendency towards a relaxation of the rigidity of the penal legislation can be discerned, as in the case of France⁵⁹ and the Federal Republic of Germany,¹⁴ where the different Länder may interpret the provisions of this legislation in a more or less flexible manner.⁴⁶ This tendency is undoubtedly due to the fact that the legislation in question often remains a dead letter, the number of prosecutions being infinitesimally small in relation to the number of illegal abortions — the latter may be reckoned in hundreds of thousands in some of the countries concerned. Another feature of the legislation of certain of these countries is the explicit prohibition of all publicity in favour of birth control and of the sale of contraceptive devices and products.

In order to illustrate the diverse tendencies now apparent in the countries of this geographical area, it is proposed to analyse the legislation currently in force in France, Switzerland (as applied in the Canton of Geneva), Turkey and the United Kingdom.

France

The number of illegal abortions in France has been estimated to vary, on the average, between 250 000 and 300 000 per year, although certain authors are of the opinion that the real figure is much higher.^{11,43,48} In spite of the rigidity of the provisions concerning abortion in the Penal Code, the number of actual convictions for illegal abortion has been estimated as scarcely higher than two per thousand.^{44,53}

Under the terms of Article 317 of the Penal Code, "any person who, by means of foodstuffs, beverages, medicaments, manipulations, violence or in any other way, has procured or attempted to procure the abortion of a pregnant woman, or a woman thought to be pregnant, with or without her consent", is liable to 1-5 years' imprisonment and a fine of 1800-36 000 F. These penalties are increased (to 5-10 years' imprisonment and a fine of 18 000-72 000 F) in the case of habitual abortionists; they are accompanied by five years' suspension from professional practice or total disqualification therefrom in the case of members of the medical or paramedical professions (physicians, midwives, dentists, nurses, pharmacists, masseurs, students of medicine or pharmacy, employees in pharmacies and even herbalists, truss-makers [bandagistes] and traders in surgical instruments). A woman who procures or attempts to procure her own miscarriage or who has agreed

to make use of methods indicated to her or administered for this purpose is liable to imprisonment for 6 months to 2 years and a fine of 360-7200 F.

Moreover, under the terms of Article L.645 of the Public Health Code it is prohibited to display, offer for sale, sell, place on sale or distribute, or arrange for the offering for sale, sale or distribution of, in any way whatsoever, remedies and substances, intra-uterine sounds, and other similar devices, liable to induce or promote miscarriage, and included in a list established by way of public administrative regulations (this list appears in Article R.5242 of the second part of the Code). Notwithstanding these provisions, pharmacists may sell the aforementioned remedies, substances and devices, but only on medical prescription.

Article L.647 of the Code prescribes that the incitement to abortion, whether by speeches delivered in public places or at public meetings, or by the sale, placing on sale, offer, display, placarding, distribution, etc., of books, leaflets, pamphlets, advertisements, etc., or by advertising to promote medical or so-called "medical" consulting rooms, is a punishable offence, even if no actual abortions are performed as a result of such incitement.

Article 378 of the Penal Code, while not compelling physicians and auxiliary medical personnel to infringe professional secrecy, does exempt them from the latter obligation in respect of cases of criminal abortion of which they may have knowledge.

With regard to therapeutic abortion (legally recognized in France since the promulgation of the Decree of 29 July 1939), the provisions of Article L.161-1 of the Public Health Code are so restrictive in nature that very few therapeutic abortions are in fact authorized. According to one source, only 132 therapeutic abortions were reported in the Seine Department over a three-year period.⁸⁶ In fact, an examination of the precise wording of the Article in question indicates that abortion is authorized only to the extent that it is the consequence of a therapeutic intervention liable to entail the interruption of the pregnancy. The Article, which reproduces the provisions of Section 87 of the Decree of 29 July 1939, is couched in the following terms: "When the life of the mother is seriously endangered and either a surgical operation or the application of a therapeutic procedure liable to entail the interruption of pregnancy is required to safeguard her life, the attending physician or the surgeon must seek the opinion of two consultant physicians, one of whom must be selected from the list of experts attached to the civil court, who after an examination of the case and discussions must certify that the life of the mother cannot be safeguarded except by the therapeutic intervention in question . . ."

These provisions have also been embodied in the Code of Medical Ethics, Section 38 of which specifies that a therapeutic abortion may be performed only when it is the sole means likely to save the mother's life. A record of the consultation is prepared in triplicate, one copy being given to the patient and the two others being retained by the consultant physicians; a record of the decision taken (in which the patient's

name is not indicated) is moreover sent by registered mail to the Chairman of the Departmental Council of the Association of Physicians with which the two consultants are registered. Should the patient, after being duly informed, refuse to undergo a therapeutic abortion even if this is medically indicated, the physician must respect her wishes; there are no possible exceptions to this rule, other than in cases of extreme emergency and when the patient is not in a condition to give her consent. If the physician feels unable, by reason of his convictions, to advise that an abortion be performed, he may withdraw after taking steps to ensure the continuity of care by a qualified colleague.

There are however signs of a more liberal trend in regard to abortion legislation in France, culminating in the recent introduction of a private bill on the subject in the National Assembly (see p. 7).

Switzerland

Cases of criminal abortion in Switzerland are covered by the Penal Code, Article 118 of which deals with abortion induced by the mother and Article 119 with abortion induced by another person. As far as non-punishable cases of abortion are concerned, the provisions on the subject are contained in Article 120 which specifies that :

“ An abortion within the meaning of this Code is not committed when a pregnancy is terminated by a qualified physician, with the written consent of the pregnant woman and a certificate of assent [avis conforme] from a second qualified physician, in order to prevent a danger which cannot be otherwise averted and which threatens the life of the mother or seriously threatens to impair her health in a grave and permanent manner.

The certificate of assent required under the first paragraph must be issued by a physician who is a specialist in the condition from which the pregnant woman is suffering and who is authorized, either generally or in each particular case, by the competent authority of the canton in which the pregnant woman is domiciled or in which the operation is to be performed.

If the pregnant woman is incapable of judgement, the written consent of her legal representative shall be required ”.

As has been pointed out by various writers,^{26,49} Article 120 has been interpreted in different ways; this is principally due to the fact that the assent required under the Article will depend on the particular judgement of the physicians designated by the competent cantonal authorities. On the basis of their interpretation of Article 120, certain cantons scarcely ever authorize abortions, while others have adopted a much more liberal policy.^a

In the Canton of Geneva, the implementing provisions are contained in Regulations made on 12 December 1953 and subsequently amended on 16 February 1954 and again on 26 January 1960 (the latter amendment deals with the case of aliens not domiciled in Switzerland or domiciled therein for less than three months). Under the terms of these Regulations, the Council of State designates the physicians authorized to issue the certificates of assent prescribed by Article 120 of the Penal Code;

^a For a recent analysis of legal and illegal abortion in Switzerland, see Stamm, H. (1970) *Fortschr. Geburtsh. Gynäk.*, 42, 1.

the term of office of these physicians is three years and is subject to renewal. The authorized physicians constitute themselves into an association [collège], which must ensure that the certificates issued are based on principles consistent with Article 120 of the Code. The association is required to submit a quarterly report on its activities to the medical sub-commission of the Commission for the Supervision of the Medical and Auxiliary Medical Professions, indicating the number of certificates issued or refused by each of the authorized physicians, together with the address and origin of the women examined. The authorized physician to whom a medical practitioner or the patient of a medical practitioner applies for the interruption of a pregnancy must be provided with the following supporting documents: (a) a medical certificate stating the grounds for the application, as well as the necessary documents establishing the pregnant woman's written consent or that of her legal representative, if she is incapable of judgement; (b) the documents necessary to establish the identity, nationality and domicile of the pregnant woman or, in appropriate cases, of her legal representative. The authorized physician must make a thorough, personal examination of the pregnant woman and, if necessary, may (for example) have her admitted to hospital for observation prior to making a decision. He may seek any additional information he considers relevant from the medical practitioner who drew up the initial certificate. He must moreover state in his report whether the pregnant woman has already applied unsuccessfully to another authorized physician (if this is the case, no decision must be taken until the latter has been consulted). Should he detect a condition which does not fall within his own field of specialization, he must refer the woman to an appropriate specialist. An authorized physician may not grant certificates of assent to his own patients.

After concluding his examination, the authorized physician sends a substantiated report, accompanied by the requisite documents, to the physician who submitted the application (or to the pregnant woman if she has applied directly), for forwarding to the physician who is to perform the operation. Moreover, the latter may not proceed therewith unless he is in possession of the certificate of assent and the supporting documents establishing the woman's written consent and her identity, nationality and domicile. Under the provisions introduced on 26 January 1960, a "Commission de Pré-expertise" is responsible for dealing with alien applicants not domiciled in Switzerland or domiciled therein for less than three months. This commission interrogates and examines the applicant and scrutinizes the file which she presents. The commission may then take one of three decisions, viz.: (a) it may decide to issue a certificate of assent, if the application appears to be well-founded; (b) it may decide to reject the application if there appear to be no grounds for an abortion; (c) if the application raises a problem of a medical nature which cannot be immediately resolved, the person is given a form permitting her to consult a physician authorized to issue a certificate of assent in the specialty in question; it is up to this physician to decide whether or not to grant a certificate of assent.

Turkey

Under the terms of Section 22 of the Turkish Law of 13 January 1960 on medical ethics, abortion was permitted only if it constituted the sole means of saving the life of the mother; the operation could be performed only on the basis of a detailed report by two specialists in gynaecology or, failing this, two general practitioners. This policy underwent a substantial change with the enactment of the Law of 1 April 1965 on family planning and the Regulations of 12 June 1967 concerning the interruption of pregnancy and sterilization. As the law now stands, an abortion may be authorized where the life of the mother is endangered or is liable to be endangered by the pregnancy, or if it is impossible for the embryo or fetus to develop normally or there is a risk of a serious congenital defect affecting the child or succeeding generations. The diseases and conditions which constitute indications for therapeutic abortion are enumerated in Annex I to the 1967 Regulations; they include a number of diseases of various organs and systems, as well as mental diseases such as schizophrenia, manic-depressive psychosis, psychosis whether or not associated with the pregnancy, and paranoia. The presence in the uterus of an intra-uterine device also constitutes an acceptable indication. The cases in which there is a risk of a serious deformity affecting the fetus or succeeding generations are enumerated as follows: 1. diseases treated during pregnancy with cortisone or by means of medicaments liable to be seriously prejudicial to the fetus; 2. treatment with X-rays or radioisotopes, liable to affect the embryo or fetus; 3. hereditary mental diseases in the father or mother; 4. the parents have already had a number of children who are mentally retarded as a result of a chromosomal defect or anomaly; 5. the following diseases have occurred during the first three months of pregnancy: (a) rubella; (b) viral hepatitis; (c) toxoplasmosis; (d) varicella; (e) other serious viral infections.

Section 6 of the 1967 Regulations deals with sterilization and lays down that the latter is authorized where the woman ought not to become pregnant, on account of a defect or disease, or where either the man or woman suffers from a serious hereditary disease. Annex II to the Regulations lists the diseases, etc., which constitute indications for sterilization, as follows: 1. incurable or long-term diseases which require the interruption of pregnancy; 2. congenital haemolytic anaemia; 3. haemophilia; 4. Huntington's chorea; 5. Wilson's disease (progressive lenticular degeneration); 6. certain hereditary diseases; 7. retinitis pigmentosa; 8. enucleation operation for retinoblastoma performed on either the mother or father; 9. serious malformations in one of the spouses or a member of their families; 10. three previous Caesarean sections in the woman.

Two types of committees are established to deal with cases of therapeutic abortion and sterilization, i.e. Therapeutic Abortion and Sterilization Committees and Higher Therapeutic Abortion and Sterilization Committees. The former are, as a rule, composed of hospital specialists, one of whom is a specialist in obstetrics and gynaecology, selected by the Ministry of Health and Social Welfare. Their reports must be drawn

up within seven days of hearing a case. Appeals against negative decisions are resolved by a Higher Committee on Therapeutic Abortion and Sterilization.

Abortions must, in principle, be performed either in official hospitals or in private institutions authorized for the purpose by the Ministry of Health and Social Welfare. The operation is dependent upon the written consent of the woman concerned or, if she is a minor, on that of her parents. If the woman is in the custody of a guardian, on account of being a minor or because of incapacity, the authorization of the Magistrate's Court is required. However, prior consent or authorization are not required where the delay involved could be detrimental to the woman's health.

United Kingdom

Until the promulgation of the Abortion Act 1967, the principal statute governing abortion in the United Kingdom was the Offences against the Person Act of 1861 which prescribed (Section 58) that "unlawfully" induced abortion was a felony punishable by life imprisonment. No definition was given of the term "unlawfully". In 1938, however, a court ruling in the famous *Rex v. Bourne* case⁹⁰ indicated that an abortion carried out in good faith to preserve the mother's life was lawful. To quote the ruling in question, "if the doctor is of the opinion . . . that the probable consequence of continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor . . . is operating for the purpose of preserving the life of the woman".⁶² In the case in question, an eminent gynaecologist, Mr Aleck Bourne, had performed an abortion on a 14-year-old girl who had been the victim of a multiple rape. This ruling constituted a fundamental judicial precedent. Nevertheless, the actual number of therapeutic abortions showed only a slight tendency to increase until the adoption of the 1967 Act. Thus, the total number of therapeutic abortions performed in National Health Service Hospitals in England and Wales was only 1570 in 1958 rising to 2830 in 1962 and 6380 in 1966.¹⁰⁵ These figures do not of course take into account "private" therapeutic abortions; Diggory²⁷ estimates that there were at least 15 000 such abortions in 1966. By way of comparison, the number of illegal abortions in England and Wales in the years immediately preceding the change in the law was estimated at between 80 000 and 100 000¹⁰⁰ although, as pointed out by several writers, it is extremely difficult to arrive at any precise determination of the number of illegal abortions.

A total of 65 241 legal abortions were performed in England and Wales in the first 18 months following the entry into force of the Abortion Act 1967.²⁸ It is interesting to note that, according to a statistical analysis published in August 1970,¹⁰⁸ 1309 of the 23 641 abortions performed in the first eight months after the introduction of the Act involved women not resident in England and Wales.

The Abortion Act of 1967 (which, it should be pointed out, applies to England, Wales and Scotland but not to Northern Ireland) has aroused numerous commentaries in the British and foreign medical press 2, 35, 65, 66, 68, 96, 99, 102 and is certainly likely to influence the legislation of many countries. There are, in fact, unmistakable signs of such influence in the new Acts passed in Singapore (see p. 35) and South Australia (see p. 68) and in the Medical Termination of Pregnancy Bill now (summer 1970) before the Indian Parliament (see p. 32).²⁰ As will be seen, the Act contains certain innovatory elements, notably in the provisions of Section 1 specifying that the medical practitioner must, where there are medical indications not involving a danger to life, weigh the relative risks of continuance of the pregnancy and its termination. Section 1 of the Act reads as follows :

“ 1. (1) Subject to the provisions of this section, a person shall not be guilty of an offence under the law relating to abortion^a when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith —

(a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or

(b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

(2) In determining whether the continuance of a pregnancy would involve such risk of injury to health as is mentioned in paragraph (a) of subsection (1) of this section, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

(3) Except as provided by subsection (4) of this section, any treatment for the termination of pregnancy must be carried out in a hospital vested in the Minister of Health or the Secretary of State under the National Health Service Acts, or in a place for the time being approved for the purposes of this section by the said Minister or the Secretary of State.

(4) Subsection (3) of this Section, and so much of subsection (1) as relates to the opinion of two registered medical practitioners, shall not apply to the termination of a pregnancy by a registered medical practitioner in a case where he is of the opinion, formed in good faith, that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman ”.

In a booklet containing advice on the application of the Act, published by the Abortion Law Reform Association,¹ it is pointed out that there are undoubtedly very few medical conditions which constitute an absolute indication for terminating a pregnancy on the basis of “ risk to the life of the pregnant woman ”. Malignancy, especially carcinoma of the breast, usually provides the most imperative medical reason for an abortion. The British Medical Association Committee on Therapeutic

^a “ The law relating to abortion ” is defined elsewhere in the Act as “ sections 58 and 59 of the Offences against the Person Act 1861, and any rule of law relating to the procurement of abortion ”.

Abortion has enumerated a number of somatic conditions which, depending on their severity, may be indications for therapeutic abortion.¹⁶ These include cardiac failure, rheumatic heart disease, congenital heart disease, pulmonary hypertension, hypertension (if complicated by cardiac or renal failure), acute hepatitis, etc. Termination of pregnancy may, moreover, become necessary in the course of surgical intervention in acute abdominal conditions due to acute pancreatitis or to perforation in cases of peptic ulcer or ulcerative colitis. Pregnancy may present a threat to life in some women with a bad obstetric history, particularly grand multipara who have had long and difficult labours, and where complicated by post-partum haemorrhage. In assessing the risk of pregnancy to a woman's life, specialist advice is stated to be necessary in almost every case.

As regards "injury to the physical or mental health of the pregnant woman", the Committee has pointed out that the continuation of pregnancy may have an adverse effect on the long-term prognosis of a number of conditions, such as active pulmonary tuberculosis, diabetes (especially in cases complicated by renal or retinal lesions or with a history of repeated stillbirths), carcinoma of the ovary, multiple sclerosis, epilepsy, suprarenal disease, diabetes insipidus, peptic ulcer, etc. Examples are given of psychiatric conditions in which termination may be indicated; these include schizophrenia, obsessional states, and anxiety state; assessment may be very difficult, however, and the patient's reaction to previous pregnancies may prove an important guide.

Paragraph (b) of sub-section 1 of Section 1 deals with cases where there is a risk that the child might be affected by such physical or mental abnormalities as to be seriously handicapped. The BMA Committee on Therapeutic Abortion has noted that certain conditions or agents may produce a substantial risk of physical or mental defect, e.g. rubella, smallpox, vaccinia, influenza, cytotoxic drugs, X-rays and other radiation. The possibility of fetal abnormality needs to be considered if the pelvis has received over 30 rads, and is almost certain if over 200 rads have been received. Specific reference is also made, in the Abortion Law Reform Association booklet, to a certain number of hereditary diseases, such as retinoblastoma, Huntington's chorea, neurofibromatosis, phenylketonuria, thalassaemia, haemophilia, etc.

Sub-section 2 of Section 1 is of considerable significance since, although not providing for social indications as such, it does cover medico-social indications in the sense that account may be taken of environmental factors liable to affect physical or mental health.

Section 4 of the Act is also of interest since it lays down that no person is required to participate in any treatment authorized by the Act to which he has a conscientious objection. This provision is however without prejudice to the duty to participate in treatment which is necessary to save the life or to prevent grave permanent injury to the physical or mental health of a pregnant woman.

The procedure to be adopted in respect to therapeutic abortions is mentioned in Section 2 of the Act and is dealt with in detail in the Abor-

tion Regulations 1968 (the latter were slightly amended in 1969; there are separate Regulations for Scotland). It is laid down that the two medical practitioners (one in the case of an emergency operation) must draw up a "certificate of opinion" as prescribed in Schedule 1 to the Regulations. This certificate of opinion is retained by the practitioner who terminates the pregnancy for at least three years, after which it may be destroyed. Within seven days of the termination, the latter physician must moreover notify the Chief Medical Officer of the Ministry of Health (this applies to England excluding Monmouthshire) of the operation, using a notification form as set out in Schedule 2 to the Regulations.

EASTERN EUROPE

During the last 20 years or so, the countries of Eastern Europe have introduced numerous items of legislation dealing with legal abortion; the original enactments have frequently been replaced or amended in such a way as to extend the indications for legal abortion or, in a contrary sense, to render the conditions for such abortion more stringent. Parallel changes have of course been made to the pertinent penal legislation. It seems, however, that in spite of the liberalization of the abortion legislation and the extension of the indications to cover medico-social or social grounds, a certain number of criminal abortions continue to be performed. Moreover, certain writers consider that, even if maternal mortality does seem to diminish when the conditions for legal abortion are liberalized, it cannot necessarily be deduced that this is the consequence of the reform of the legislation, since more effective treatments, notably against infection, have been developed over the years and these have enabled mortality associated with abortion to be reduced.

The demographic consequences of a change of policy in regard to legal abortion are sometimes quite striking.^{51, 58} In Romania, for example, the effect of a reversion to a restrictive policy in late 1966 was that the birth rate, which had fallen to 14.3 per 1000 population in that year, rose to 38.4 per 1000 population in the third quarter of 1967.¹⁰⁶ In this field too, however, it is difficult to draw general conclusions on account of the impossibility of assessing the relative impact of birth control measures.

Bulgaria

Instructions issued in Bulgaria on 27 April 1956 prescribed that, in conformity with Section 135 of the Penal Code, the interruption of pregnancy in any pregnant woman who expressed a desire therefor was permitted. Abortions were, however, not authorized if any of the following contraindications were present :

- (a) acute or sub-acute inflammation of the genital organs;
- (b) a purulent focus, regardless of its localization;

- (c) an acute communicable disease;
- (d) a previous abortion during the preceding six months;
- (e) pregnancy of more than 12 weeks' duration (in the latter case, an abortion may however be authorized if a thorough examination of the pregnant woman in a hospital shows that continuation of pregnancy and delivery might endanger her health or life).

Vasilev¹¹⁰ reports that some 950 000 abortions were performed during the 10 years following the entry into force of the 1956 instructions. On account of this situation, the legislation on the subject of abortion underwent reform in 1968. New Instructions to regulate the artificial interruption of pregnancy and to prevent criminal abortion were in fact issued on 16 February 1968, in pursuance of Decree No. 61 of 28 December 1967 to increase the birth rate. The reform was, moreover, embodied in the provisions of Section 126 of the new Penal Code promulgated by a Decree dated 16 March 1968.

Under the new provisions in force, the artificial interruption of pregnancy is subject to the following restrictions :

(a) the abortion is prohibited in the case of women having no living children, unless it is medically indicated or there are special circumstances of a grave nature;

(b) the abortion is authorized in the case of women having one or two children, but requires the approval of a special medical board. The board is required to explain the harmfulness and dangers of abortion, the need to take the pregnancy to full term, the financial support which the family will receive after the birth of the child and, in general, must make every effort to dissuade the woman from pursuing her desire to have her pregnancy interrupted. If, in spite of this, the woman persists in asking for her pregnancy to be terminated, the board gives the necessary authorization;

(c) the interruption of pregnancy, at the request of the pregnant woman, does not require the approval of a medical board if the woman is over 45 years of age or has already had three or more children;

(d) the artificial interruption of pregnancy, in the case of unmarried women, is subject to approval by a special board, where it is medically indicated or there are special circumstances of a grave nature, as follows :

if the woman concerned is under 16 years of age, subject to the consent of the parents;

if the woman concerned has been made pregnant by a person whom she cannot marry, because he is a close relative;

in the case of rape, if the woman concerned has lodged a complaint in good time with the competent authorities and the stage of pregnancy corresponds to the period which has elapsed since the rape;

in the case of serious social indications, established by a women's health centre.

In addition, the contraindications already provided for by the 1956 Instructions are repeated in rather more precise terms (the gestational time limit for legal abortion is moreover lowered from 12 to 10 weeks). The new Instructions of 1968 prescribe that the rayon women's health centre to which the pregnant woman submits her application for abortion must make every effort to persuade her to withdraw her application, and must take every opportunity to explain the situation and help both her and her family in every possible way. The staff at the centre are required to give social assistance to pregnant women in need. Where necessary they provide financial and social assistance, in conjunction with other competent agencies, to those pregnant women who decide to take their pregnancies to term. In cases where the woman cannot be persuaded to change her mind and there are grounds for the legal interruption of pregnancy, the woman is referred to the appropriate board responsible for granting authorizations for the interruption of pregnancy. If authorization is granted, the woman is admitted to an appropriate hospital establishment. The abortion must be performed not later than 10 days after the establishment has received the appropriate authorization. If the abortion is required on the basis of medical indications, the hospital establishment in which the operation is to be carried out is entitled to review the indications and contraindications. Decisions of the board are recorded in a special register, kept as a document for official use.

The 1968 Instructions also contain provisions, analysed elsewhere in this survey (see p. 21), concerning women who are citizens of foreign countries, and include a special section dealing with the intensification of measures for the prevention of criminal abortion (see p. 19). A list of the diseases which constitute contraindications for abortion is appended to the Instructions.

According to a source quoted by David,²³ the interpretation of the Bulgarian abortion statutes was liberalized in 1970; abortions are now available, practically on request, for all unmarried women and married women having at least one child.

Czechoslovakia

A specific law dealing with abortion was promulgated in Czechoslovakia only in 1957. This law repealed the provisions of Section 218 of the Penal Law of 1950 (this Section had prescribed that, by way of exception, abortion was not punishable if there was a risk of either pregnancy or delivery seriously endangering the woman's health or if one of the parents was suffering from a serious hereditary disease; the diagnosis required confirmation by an official medical officer, while the operation was subject to the woman's consent and had to be performed in a hospital establishment). As stated in its introductory provisions, the objective of the 1957 Law was to prevent the harmful effects on the health and life of women, resulting from the procurement of abortions by unqualified persons and outside medical establishments. Until 1957, the number of criminal abortions was estimated at approximately 100 000-300 000 per

year⁵⁸ (the estimates reported by Heiss⁵⁰ are however much lower than these figures), compared with only 2000 to 7000 legal abortions. Data for the period 1958-1967, i.e. after the promulgation of the 1957 Law and the provisions for its implementation, show a number of legal abortions varying between 70 000 and 90 000 per year. Nearly 100 000 legal abortions were performed in 1968. It appears, however, that the number of illegal abortions remains fairly high, the reduction being of the order of 65-80 %.⁸⁸

Under the terms of the 1957 Law (No. 68 of 19 December 1957), an abortion may be performed, subject to the woman's consent, provided that authorization has been obtained. The latter is accorded, after an examination of the application, by a special board, it being laid down that authorization may be granted only on health grounds or for other reasons which justify special consideration. Abortions may be performed only in medical establishments with in-patient facilities.

The provisions for the implementation of this Law are currently governed by a Government Decree of 21 December 1962 (amended on 6 July 1966). Details of the procedure governing legal abortions have moreover been prescribed by way of ministerial instructions, the most recent being dated 17 September 1966. The health grounds (medical indications) which justify abortion are enumerated in detail in the Annex to the Instruction.^a The following are considered to merit special consideration and justify the termination of pregnancy: (a) advanced age of the woman concerned; (b) three or more living children; (c) death or disability of the husband; (d) disruption of the family; (e) primary economic responsibility for support of the family placed on the woman; (f) a difficult situation arising from pregnancy of an unmarried woman; (g) pregnancy due to rape or other criminal act. An abortion may however not be authorized if certain contraindications are present, viz.: the pregnancy is of more than 12 weeks' duration; acute or chronic inflammatory diseases of the reproductive organs; purulent foci likely to prevent the operation being successfully performed; acute communicable disease; and ABO incompatibility in primigravidas.

A woman wishing to have her pregnancy terminated must apply, either directly or through her attending physician, to the head of the department of gynaecology of any hospital with policlinic in the district in which she is permanently domiciled or in which the registered office of the work-place or educational establishment which she attends is located, and inform him of the reasons for her application; if there is no hospital with policlinic in the district concerned, she must apply to the head of the department of gynaecology of a policlinic. The head of the gynaecology department receiving the application transmits it to an abortion commission; such commissions have been established under the auspices of the health section of people's councils at the level of the district (or equivalent jurisdiction). The commission (which

^a The list includes hereditary diseases as well as, under the heading "gynaecological and obstetrical indications", such cases as conception between relatives in a direct line and between brother and sister, and conception before the age of 16 or after the age of 45.

comprises three members, one of whom is a physician, preferably attached to the department of gynaecology of a hospital with policlinic or of a policlinic) must thoroughly examine the overall situation created by a combination of medical and social factors and must also take into account the contraindications specified by the legislation in force (the rule that pregnancy must not be terminated after the 12th week must, in particular, be strictly observed; the duration of pregnancy must be determined not only on the basis of a case history but also by an objective examination of the uterus); the commission decides whether an abortion should be performed even if contraindications are present. If authorized, the abortion is performed in the gynaecology department of a hospital with policlinic, the head of which is a member of the commission, or, at the request of the woman concerned, in another hospital with policlinic.

The abortion commission need not invite the woman to the hearing on her application if the abortion is justified on medical grounds, duly confirmed by examination, or if the applicant is more than 40 years of age, has at least three living children, is a widow, or has become pregnant as a result of rape or other criminal act (the commission may likewise, on the proposal of a physician, consider an application in the absence of the woman, if there are other substantial reasons for doing so). Before discharge from hospital, the woman must be instructed in birth control techniques by the physician responsible for the operation and must be warned that a further abortion may not be performed until a period of at least six months has elapsed.

If the application is rejected, the chairman of the district abortion commission must inform the woman of her right to appeal to the regional abortion commission.

Authorization for abortion in the case of aliens may be granted under the conditions analysed elsewhere in this survey (see p. 21).

With a view to proceedings against persons performing illegal abortions, every physician must notify the district public prosecutor and other competent agencies of every case in which a medical examination, and scientifically confirmed evidence, show that an abortion has been performed in violation of the law. The same procedure is followed in cases of death resulting from criminal abortion.

Eastern Germany

During the period 1946-1947, legal abortion in Eastern Germany was permitted only on medical grounds. Thereafter, the repeal of Sections 218-220 of the Penal Code of 15 May 1871 in certain of the then existing Länder and the acceptance of extended medico-social, ethical and eugenic indications, with the aim of suppressing criminal abortion, resulted in a considerable increase in the number of legal abortions.⁷⁰ A further change occurred in 1950, with the enactment of the Law of 27 September 1950 on maternal and child protection and women's rights, which eliminated all but medical and eugenic indications in their strictest sense and had the consequence of a diminution in the number of legal

abortions. Section 11 of this Law prescribes that an abortion may be performed only where the woman's life or health would be seriously endangered by continuation of the pregnancy or where one of the parents suffers from a serious hereditary disease. Authorization must be given in each case by a commission composed of physicians and representatives of the health services and the League of Democratic Women. Abortions must be performed in hospitals, by specialists.

It was later found, however, that this Section, whose primary purposes were not only to promote an increase in the birth rate, but also to safeguard the life and health of pregnant women, was being interpreted in a very variable manner in the different districts and localities; the competent commissions adopted divergent criteria in the evaluation of medical indications and in some areas legal abortions were being authorized only in exceptional circumstances.⁹⁵ It seems that the total number of abortions (including legal and criminal abortions) fell from an estimated 150 000 in 1950 to 70 000-90 000 in 1962.⁸⁸ Mehlan reports that the number of legal abortions during the period 1959-1964 was only 700 to 800 per year.⁷²

In order to mitigate the stringency of the Law and the manner in which it was being applied, Instructions issued on 15 March 1965²⁵ laid down the specific indications for legal abortion. Permission for interruption of pregnancy is to be granted when :

(a) a diagnosis based on medical examination and a prognosis which takes into account the living conditions of the woman lead to the expectation of a danger to her life or a serious threat to her physical and mental health as the result of carrying the pregnancy to term or through the burdens of child care;

(b) the pregnant woman is in her 40th year or older;

(c) the pregnant woman is less than 16 years of age;

(d) the pregnant woman has already had four children with an average interval of less than 15 months between each delivery and her current pregnancy began less than six months after the last delivery;

(e) the pregnant woman, either alone or together with her husband, has legal responsibility for five or more children living in the household;

(f) the woman became pregnant as a result of rape; and

(g) it is highly probable that the child will be affected by a mental disease or by a serious abnormality.

These indications do not however apply if the pregnancy is of more than 12 weeks' duration, if the pregnant woman is suffering from a disease likely to be aggravated by the operation, and in cases of alleged rape where, after investigation, no proceedings have been initiated by the competent authorities.

Applications for legal abortion are lodged by the pregnant woman, through the counselling centre for pregnant women in the area in which she is domiciled, to the health authorities of the locality. In the case

of minors or adult women under guardianship, the consent of the legal representative is required. The application must be accompanied by a statement from the counselling centre, assessing the reasons cited by the applicant and providing pertinent information about her previous pregnancies, health, living conditions, etc. The decision concerning the application is taken by the competent local [Kreis] Abortion Commission, on the basis of a thorough medical examination, including a review of the findings of previous examinations and expert opinions, as well as a careful review of the living conditions and personal situation of the pregnant woman. The applicant must be given an opportunity to present her case orally to the Commission, although this procedure may be waived when it is apparent that the indications mentioned in items (b)-(e) are applicable. A decision on the application must be made within 14 days of its receipt. The physician attending the pregnant woman is entitled to participate in the deliberations of the Commission and to clarify her application. Decisions are taken by majority vote of the members of the Commission. In the event of the application being refused, the applicant may lodge an appeal with the Department of Health and Social Affairs of the District [Bezirk] Council. The appeal is considered by the District Abortion Commission attached to the latter Department. If necessary, additional medical examinations and assessments of the applicant's living conditions and personal situation are carried out. The physician attending the pregnant woman again has the right to participate in the deliberations and to clarify the application. Decisions on the appeal, taken by majority vote of the members of the Commission, must be made within eight days of the submission of the appeal. The head of the department of obstetrics and gynaecology of the local hospital serving the area where the pregnant woman resides is responsible for ensuring that the abortion is performed in the appropriate department by a specialist in obstetrics and gynaecology or by a physician undergoing training in this specialty. Detailed provisions are included in the Instructions on the reporting of legal abortions. Every pregnant woman who has undergone an abortion is required to report soon afterwards to a family planning centre for contraceptive counselling.

These Instructions led to a very substantial increase in the number of applications for abortion.⁹¹ The actual rate of legal abortions during the period 1965-1967 was approximately 6.1 per 100 births.⁷³ With the more extensive publicity in favour of contraception, however, there appears to have been a decline in the abortion rate in 1968.

Hungary

Until 1952, abortion was authorized in Hungary solely on medical indications. In 1953, the law was liberalized to provide for medico-social and eugenic indications and again in 1956 to cover purely social indications; the two 1956 enactments, dated 3 June and 24 June respectively, are undoubtedly amongst the most liberal now in force in Europe. Their introduction resulted in a pronounced increase in the number of legal abortions, from 1700 in 1952 to 152 400 in 1959 and 187 500 in

1967.^{105, 107} Several writers have pointed out that, in spite of the progressive liberalization of the legislation, illegal abortion continues to be relatively widely practised. Moreover, the birth rate in Hungary is currently one of the lowest in Europe. Medical indications for termination of pregnancy account for only 4% of cases, compared with 10% in Czechoslovakia and 1% in Romania⁸⁸ (the Romanian figure reflects the situation prior to the introduction of more restrictive legislation in 1966).

The Ordinance of 24 June 1956 prescribes that the competent board authorizes the interruption of pregnancy: (a) if it is necessary to save the life of the pregnant woman in the event of a grave illness, in order to prevent the state of a patient giving rise to complications, and if there is a likelihood that the child would be affected by very serious lesions; (b) if the personal or family circumstances of the applicant justify the termination of the pregnancy or if the applicant maintains her application in spite of attempts by the board to dissuade her. Authorization for an abortion on the grounds covered by (b) may be granted only during the first three months of pregnancy. Abortions may be performed only on an in-patient basis. Hospital establishments are required to furnish periodic reports of the abortions which have been performed in the establishments, while the boards must submit an annual report on their activity to the competent health authority.

Poland

As in the case of Hungary, there has been a progressive liberalization of the legislation on abortion in Poland. Thus, under the terms of the Law of 28 October 1950 on the medical profession, abortion could be performed only where it was considered to be essential in order to safeguard the health of the pregnant woman or where there were sound grounds for assuming that the pregnancy was the result of a criminal act covered by the Penal Code. Since the promulgation of the Law of 27 April 1956 (the aim of which, as stated in the preamble, is to protect the health of the woman against the ill-effects of abortion performed under unsatisfactory conditions and in the absence of a physician), legal abortions have been permitted on medical grounds as well as on account of difficult living conditions or where there is presumptive evidence that the pregnancy is the result of a criminal act (where the indications are social or humanitarian, an abortion may however not be performed if it is medically contraindicated). This liberalization seems to have led to a considerable decrease in the number of illegal abortions, with a parallel reduction in mortality due to abortion (from 76 deaths in 1959 to 26 in 1965).⁷² In contrast, the birth rate, which was twice as high as that of the United Kingdom in 1952, fell below the U.K. rate in 1965.⁸⁸

It is interesting to point out that, according to statistics for the year 1968, 121 700 legal abortions were performed, 120 000 for social reasons and only 1700 for medical reasons.²⁴

Under the terms of the Ordinance of 19 December 1959, which was made for the implementation of the Law of 27 April 1956 and repealed

an earlier Ordinance dated 11 May 1956, every woman who wishes to undergo an abortion must apply to a physician for a certificate attesting that interruption of pregnancy is permissible. If the abortion is requested on account of living conditions, she must submit a certificate concerning these conditions to the physician. (Since 1960, however, an oral declaration by the woman appears to be sufficient to establish a difficult social situation).³⁸ On the basis of the examination carried out or, in the case of an application based on social indications, of the certificate submitted by the woman, the physician determines whether the conditions for an abortion are fulfilled and whether there are any contraindications (these are, however, not listed in the text). A physician who issues a certificate to a woman attesting that abortion is permissible must, *inter alia*, inform her of available methods of contraception and give her the address of institutions in which abortions may be performed. A woman to whom a physician has issued a certificate to the effect that her pregnancy should not be terminated is entitled to apply to the agency responsible for health questions of the people's council competent for the area in which she is domiciled, for her case to be considered by a medical board (composed of three physicians). All physicians who perform abortions other than in public institutions of the health service must keep a card index of all such operations; they are also required to send a quarterly report on the number of operations carried out to the health department of the competent people's council. As already indicated elsewhere (see p. 16), Instructions dated 19 December 1959 established the procedures governing the carrying out of abortions on an out-patient basis.

Romania

The liberalization of abortion legislation in Romania introduced by the Decree of 30 September 1957 resulted in a decrease in the birth rate; the 1955 rate of 25.6 per 1000 had fallen to 16.2 in 1962 and 14.6 in 1965.^{42, 82} Another consequence was an increase in the number of legal abortions, the reported figures being 112 000 in 1958, 219 600 in 1959 and 1 115 000 in 1965.^{73, 106} Until 1966, in fact (when a restrictive abortion policy was reintroduced), the formalities for obtaining an abortion were so expeditious that even foreign tourists coming to Romania were able to take advantage, especially as hospitalization was not a requirement.

Simultaneously with the promulgation of the Decree of 29 September 1966 regulating the interruption of pregnancy, parallel amendments were made to the Penal Code, making it an offence to induce abortion except under the conditions prescribed by law and prescribing further that any physician inducing an abortion in an emergency case without authorization and without notifying the competent agency within the prescribed period is likewise guilty of an offence (these provisions were subsequently reproduced in the new version of the Penal Code laid down by a Law dated 21 June 1968). The immediate effect of the new policy was a considerable increase in the birth rate during the

year 1967 and a reduction in the number of legal abortions (according to data communicated by the Romanian Ministry of Health, the total number for 1967 was only 51 659).

Following the promulgation of Decree No. 770 of 29 September 1966, Instructions for its implementation were issued on 19 October 1966. These prescribe that, while the interruption of pregnancy is prohibited in principle, it is authorized in the following exceptional cases :

- (a) the pregnancy endangers the life of the woman, there being no other way to avert this danger;
- (b) one of the parents suffers from a serious disease of a hereditary nature or liable to cause serious congenital malformations;
- (c) the pregnant woman suffers from a serious physical, mental or sensory disorder;
- (d) the woman is more than 45 years of age;
- (e) the woman has already had four children who are under her care;
- (f) the pregnancy is the consequence of rape or incest.

The medical and juridical indications on the basis of which an abortion may be authorized are specified in an Annex to the Instructions, which states however that the presence of certain of these diseases does not necessarily constitute an absolute indication.

Authorization for abortion is given by a medical board established in the various regions, districts and towns having the appropriate medical staff and specialized units of obstetrics and gynaecology. The board meets at the hospital of which the department of obstetrics and gynaecology where the abortion is to be performed is a part. If authorization is granted, the board transmits it to the appropriate hospital authorities. Abortions may be performed only during the first trimester of pregnancy although in exceptional cases, where the woman's life is in danger, an abortion may be carried out up to the sixth month. A special register of operations for abortion must be kept by the obstetrics and gynaecology hospital or department. On being discharged from hospital, the woman receives health education guidance concerning birth control. A physician who performs an emergency abortion must notify the public prosecutor of the district or town, by telephone and in writing, within 24 hours after the operation. He must note, on the observation sheet, what were his findings on examining the woman, mentioning whether or not he has detected any signs of induced abortion.

Union of Soviet Socialist Republics

In the USSR, all abortions were illegal, even on medical indications, during an initial period (1917-1920).²⁹ In 1920, a decree jointly issued by the People's Commissariats of Health and Justice legalized abortion with the aim of combatting the evils of clandestine abortion. Observations at the time had indicated that up to 50 % of women resorting to abortions became infected in the course of the operation, as many as

4% of these women actually dying as a result. The 1920 Decree prescribed that abortions had to be performed in hospitals, and only by physicians. Any physician performing an abortion in his own practice, for his personal gain, was liable to prosecution. Although providing for legal abortion, this legislation did impose certain restrictions; thus, abortions for first pregnancies were (except if the woman's health was seriously endangered) strongly discouraged by the physician and, if at all possible, were not to be performed at all. Physicians were urged to discourage women from undergoing abortions (although they were not entitled to refuse to perform the operation unless the pregnancy had lasted more than 2½ months) and, in particular, to dissuade applicants if there were no social, economic or medical reasons, especially for example if the woman had fewer than three children or had adequate means for supporting another child.

The implementation of the Decree of 18 November 1920 led to a considerable increase in the number of abortions (there were reported to have been 700 000 legal abortions in the RSFSR alone in 1934) and, in order to remedy this situation, the policy towards abortions was reversed with the promulgation of a Decree in 1936 limiting abortion to cases where the continuation of pregnancy endangered the life or seriously threatened the health of the woman or where there was a risk of transmission of a hereditary disease to the child; the operation had to be performed under hospital conditions. Shortly thereafter, the People's Commissariat of Health drew up a list of medical indications under 15 headings, the last covering hereditary diseases (haemophilia, idiocy, epilepsy, deaf-mutism, etc.). This list was accompanied by an enumeration of contraindications to abortion (gonorrhoea, vulvo-vaginitis, Bartholinitis, purulent foci, acute infectious diseases, etc.). The Decree remained in force (although it was amended in 1954 to absolve pregnant women from criminal liability in cases of induced abortion) until the promulgation of the Decree of 23 November 1955; the latter is essentially similar to the 1920 Decree and hence "re-legalized" the practice of abortion.²⁹

The 1955 Decree prescribes that abortions may be performed only in hospitals and other medical institutions, in accordance with instructions issued by the Ministry of Health of the USSR, the carrying out of abortions, either by physicians or persons without special qualifications, outside such hospitals and medical institutions remaining a criminal offence. Instructions issued on 28 December 1955 for the implementation of the Decree prescribe that all pregnant women who apply for an abortion are entitled to have their pregnancy terminated, although not if any medical contraindications are present. These have been enumerated elsewhere (see p. 13).

A woman desiring to undergo an abortion must first receive a certificate from the local medical officer, a gynaecologist or, in some cases, a physician in a welfare advisory centre. After a thorough examination, the physician must confirm that an indication for abortion exists, and then draws up a certificate to this effect and refers the woman to

a hospital for the operation. The minimum period of hospitalization is three days. According to published accounts,^{21, 71} it is the usual practice for a gynaecologist to discuss the reasons for the application with the woman concerned and to warn her of possible adverse consequences. A lawyer is consulted in cases of social difficulty. If the pregnant woman persists in her request for abortion, her application must be approved.

Mehlan⁷³ reports that there are approximately six million legal abortions per year in the USSR. A source (A. F. Serenko) quoted by David²² gives a figure of 1.6 abortions per live birth in 1960 and 2.5-3.0 abortions per live birth in 1965.

Yugoslavia

Under the terms of the Decree of 11 January 1952, abortions were authorized in Yugoslavia on medical, eugenic, ethical (i.e. where pregnancy resulted from a criminal act) and, exceptionally, medico-social grounds. These indications were later extended by a Decree of 16 February 1960, which repealed the above-mentioned Decree, and, most recently, by a Decree dated 26 April 1969. According to the provisions of Section 3 of the latter Decree, a pregnancy may be terminated with the agreement or on the application of the woman when : 1. it is medically established that there is no other way to save the life or avert a serious danger to the health of the woman during pregnancy or parturition, or after the latter (in such cases, an abortion may be performed at any stage of the pregnancy); 2. it may be expected, on the basis of scientific knowledge, that the child will be born with serious physical or mental defects as a result of disease in the parents (in this case, an abortion may be performed after the first trimester of pregnancy only if the operation will not cause serious harm to the health, or direct danger to the life, of the pregnant woman); 3. conception is the result of a criminal act (rape, incest, etc.) (the same proviso as indicated under item 2 applies in such cases). In addition, Section 4 prescribes that a pregnancy may be terminated at the request of the pregnant woman if it would be likely to cause her serious personal, family, financial or other difficulties, either during pregnancy or after parturition; in such cases, the abortion must be performed during the first three months of pregnancy.

The 1969 Decree also prescribes that the woman must be informed of the possible consequences of abortion and of the available methods of contraception.

Abortions must be performed in health establishments where the conditions are such as to ensure that the operation can be successfully carried out. Any health establishment in which an abortion is carried out or completed must notify the competent agency, within three days, of each case of fetal death. If there are grounds for believing that a criminal act is involved, the director of the health establishment in which the operation necessary to complete the abortion is performed must immediately inform the competent office of the public prosecutor to this effect.

Pending the issue of provisions for the implementation of the Decree of 26 April 1969, the procedure for examining applications for abortions continues to be governed by the pertinent provisions of the Decree of 16 February 1960 and the Instruction of 28 October 1960. Applications are dealt with by commissions of first instance and of appeal, constituted in health establishments possessing a properly organized department of gynaecology (general hospitals, maternity hospitals, and gynaecological and obstetric clinics). These commissions, which must give their decisions within three days of an application being made (or, if there are valid reasons, within not more than one week), are made up of two physicians (one of whom is a specialist in obstetrics and gynaecology) and a social worker. The commission of first instance determines whether the conditions for authorizing an abortion are satisfied; it takes its decision by majority vote, except when one of the medically qualified members states that there are medical contraindications. If the application is rejected, the commission informs the woman of her right to submit an immediate request for her case to be considered by a commission of appeal.

In spite of the relatively liberal provisions of this legislation, the number of illegal abortions is reported to have remained high. Official estimates place the total annual number of abortions at over 200 000, of which 70 per cent. are legal.⁷³ It appears that a significant proportion (40-50 %) of women whose applications are rejected (the percentage of applications rejected seems to be 10-12 %) undergo abortions under unlawful conditions.⁸⁸ In addition, in some instances women seem to prefer illegal abortions even where they would be entitled to undergo the operation in conformity with legal procedures, this being especially the case in rural areas; other women have recourse to clandestine abortion in order to preserve their anonymity.

SCANDINAVIA

A relatively uniform policy in regard to legal abortion has been adopted by the Scandinavian countries, even if they have done so at different times (in the years preceding the Second World War in the case of Iceland, Denmark and Sweden, and from 1950 and 1960 onwards in the case of Finland and Norway respectively). The overall trend has been towards a progressive liberalization of the grounds for legal abortion (either by substantially amending existing legislation, introducing new legislation or by a more liberal interpretation of the original provisions) and has resulted in an appreciable increase in the number of legal abortions in the course of the last decade. In spite of this liberalization, however, the number of illegal abortions seems to have remained substantial while certain citizens of these countries, unable to obtain authorization for an abortion, go abroad in order to have their pregnancy terminated.

An interesting feature of the various countries in the Scandinavian region has been their acceptance of the idea of medico-social indications, whereby consideration is paid, in evaluating the danger to a woman's health, to diverse circumstances such as, for example, difficult living conditions. While it is of course not easy to define a precise dividing line between medical, medico-social, and social indications, the laws of these countries have until recently excluded the concept of purely social indications. However, as will be seen, grounds of a social nature have been incorporated in the new laws promulgated in 1970 in Denmark and Finland; in the former country, it is even prescribed that an abortion may be performed without special authorization if the pregnant woman already has four or more children, below 18 years of age, living at home.

Denmark

Although the Civil Criminal Code of 1930 made no provision for cases in which abortion was not punishable, it was in practice admitted where necessary to avert a serious danger to the life or health of the mother.¹⁰¹ The first law specially dealing with abortion was adopted on 18 May 1937 and prescribed that a pregnancy could be terminated on the basis of medical indications (i.e. where the operation was necessary to avert a serious risk to the life or health of the woman), ethical indications (where pregnancy had resulted from an act punishable under certain provisions of the Criminal Code) and eugenic indications (where there was a risk of transmission of a hereditary disease or defect). This Law, which did not actually come into force until 1 October 1939, contained provisions in Section 2 indicating that the "serious risk" to the woman could be due to causes other than disease, thereby implicitly introducing the idea of medico-social indications. Following on the promulgation of the Law, a series of instructions and circulars were issued with the aim of clarifying its provisions. Statistics for the years following the entry into force of the Law showed⁵⁵ a considerable increase in the number of legal abortions (there was in fact almost a tenfold increase between 1940 and 1951), although this was accompanied by an appreciable increase in the number of other abortions treated in hospitals (in this case, the number more than doubled over the same period). This situation seems to have been due to a change of attitude on the part of the public towards abortion and an increasing readiness among women to have their pregnancies terminated.

An analysis of the legal abortions performed in 1951 showed that 15.6 per cent. were performed on "strictly medical" indications (excluding psychiatric conditions), 76.5 per cent. on psychiatric indications (with or without associated social grounds), 0.4 per cent. on the basis of ethical considerations, and 7.5 per cent. on eugenic indications.⁵⁵ This marked disproportion, and in particular the abusive interpretation of the concept of "socio-psychiatric" indications which corresponded neither to the spirit nor the intention of the legislation, served as a justification for the revision of the statute in force, and a new abortion

law was in fact promulgated on 22 June 1956. Under the terms of this Law, an abortion could be performed where necessary to avert a serious danger to the life or health of the woman; in evaluating this danger, due consideration was to be given to all relevant circumstances, including the living conditions of the woman, and not merely her physical and mental health but also any actual or potential state of physical or mental infirmity. In addition to retaining the ethical indications and extending the eugenic indications,⁵² the Law also provided that an abortion could be authorized in very special cases where it was presumed that the woman would be unfit to take proper care of her child due to serious physical or mental defects or other medically indicated conditions. Except where there was a serious risk to the woman's mental or physical health, an abortion could not be performed after the 16th week of pregnancy (the time limit in the 1937 Law had been three months). It is interesting to note that the 1956 Law did not result, at least initially, in any increase in the number of legal abortions, although there were appreciable changes in the breakdown of indications on the basis of which they were authorized. Moreover, the number of criminal abortions remained high, nearly 15 000 per year (i.e. 3-4 times the number of legal abortions) according to figures quoted by Skalts and Norgaard.¹⁰¹

A new, and markedly liberal, step was taken with the promulgation of Law No. 120 of 24 March 1970.^a It is now prescribed that a woman may undergo an abortion without special authorization if: (a) it is necessary to avert a risk to her life or serious deterioration to her physical or mental health, this risk being based solely or principally on circumstances of a medical character; (b) she is domiciled in Denmark and is 38 years of age or will have attained this age before the end of the 12th week of pregnancy, or has already at least four children who reside with her and are under 18 years of age. A woman domiciled in Denmark may also undergo an abortion if she has been granted special authorization to this effect. Such authorization may be granted where: 1. pregnancy, childbirth or care of the child entail a risk of deterioration of the mother's health (in reaching a decision, consideration is paid not only to physical or mental illness but also to existing or potential physical or mental infirmities, as well as to the conditions under which the woman is living); 2. the woman has become pregnant under the circumstances referred to in certain provisions of the Civil Criminal Code; 3. there is a danger that, as a result of a hereditary condition or of an injury or disease during embryonic life, the child will be affected by a serious physical or mental disorder; 4. the woman would not be capable of giving proper care to her child on account of a physical or mental disorder or feeble-mindedness; 5. the woman is for the time being incapable of giving proper care to a child on account of youth or immaturity; 6. it can be assumed that pregnancy, childbirth or care of the child represent a serious burden to the woman, which cannot otherwise be averted.

^a Provisions for the implementation of the Law were issued (in the form of Directives and a Circular) by the Ministry of Justice on 18 August 1970.

Authorizations for abortion in these cases are granted by committees established within maternity aid institutions (each committee is composed of the institution's director or his representative, a specialist in gynaecology or surgery, and a specialist in psychiatry or a physician with special knowledge of social medicine); authorization is granted only where the committee is unanimously in favour. If the application is refused, the case may be submitted to a board of appeal.

Except in cases where there is a risk to life or of serious injury to physical or mental health, an abortion may not be performed after the 12th week of pregnancy unless the competent committee or board of appeal has given special authorization.

The application for an abortion must be submitted by the woman herself (or, in some cases, her parents or guardian). If the woman is married and cohabits with her spouse, the latter must be consulted unless there are special circumstances dictating otherwise. Before an abortion is performed or authorized, a physician must inform the applicant (or, where appropriate, her parents or guardian) of the nature of the procedure and its direct consequences and potential risks.

Finland

Prior to the promulgation of Law No. 82 of 1950, abortion was permitted in Finnish hospitals only on medical indications, for the sole purpose of saving the life of the woman. The number of the abortions authorized on this basis was only 1196 in 1938 and 933 in 1945.⁴⁷

With the aim of limiting the number of criminal abortions, which had remained at a substantial level, the Law of 17 February 1950 authorized abortion where, by reason of a disease, physical defect or weakness, the continuation of pregnancy or the birth of a child would constitute a serious danger to the woman's physical or mental health; as in the case of the Danish legislation adopted in 1956, it was prescribed that, in determining the extent of this danger, account was to be taken, where necessary, of any particularly difficult conditions of the pregnant woman's life and other circumstances affecting her state of health. In addition, abortion was authorized on ethical grounds (in particular where pregnancy was due to an act punishable under the Penal Code) or eugenic grounds (risk of transmission of hereditary diseases or conditions). The number of legal abortions was approximately 4800 in 1965.¹⁰⁴

It would appear that this legislation failed to have the anticipated results and a new, more liberal Law was adopted on 24 March 1970. Under the terms of this Law, a pregnancy may be terminated at the request of the pregnant woman where: 1. continuation of the pregnancy or childbirth would entail, because of a disease, physical defect or weakness, a danger (rather than "serious danger" as in the 1950 Law) to her life or health; 2. childbirth and the care of the child would place a considerable strain on her, taking into account the living conditions of the woman and her family as well as other circumstances; 3. she became pregnant as a result of an act punishable under the Penal Code; 4. she was less than 17 or more than 40 years of age at the time of conception,

or has already had four children; 5. there are grounds for presuming that the child will be mentally retarded or will be affected, either at birth or subsequently, by a serious disease or a serious physical defect; 6. on account of a disease, mental disturbance, etc., affecting one or both of the parents, the capacity of the latter to care for the child is seriously limited.

If the woman is incapable, on account of a mental disease, mental retardation or mental disturbance, of submitting a valid application for an abortion, the measure may be carried out, if there is due justification, with the consent of a guardian or a specially designated trustee.

If the abortion is performed on the grounds that there is a risk, because of mental retardation in the mother, of the child being mentally retarded, sterilization is performed in conjunction with abortion, unless there are sound reasons for not doing so.

Before a pregnancy is terminated, the woman must be informed of the significance and effects of the operation.

Abortions must be performed at the earliest possible stage of pregnancy and may not be undertaken, on grounds other than a disease or physical defect in the woman, after the 16th week. Where the woman was not yet 17 years of age at the time of conception, or there are other special reasons, authorization may be given by the State Medical Board for abortion at a later stage, although not after the 20th week.

An abortion may be performed: (a) in the cases referred to in items 1-3 and 6 of the list of indications given above, on the recommendation of two physicians or, in the cases to be specified by way of ordinance, on the authorization of the State Medical Board; (b) in the cases referred to in item 4 of the above-mentioned list, on the decision of the physician performing the operation; (c) in the cases referred to in item 5 of the list, and in cases where an abortion is to be performed, on other than medical indications, between the 16th and 20th week of pregnancy, on the authorization of the State Medical Board.

If the decision of the two physicians involved (or, in appropriate cases, of the single physician consulted) is negative, an application for authorization may be made to the State Medical Board.

Before the decision on termination of pregnancy is taken, the father of the expected child, the woman's guardian and, if the woman is an inmate of a public institution, the medical officer or director of the latter, must be given an opportunity of stating their opinion, if this is justified under the circumstances.

Except in emergencies, abortions must be performed in so-called "abortion hospitals" approved for the purpose by the State Medical Board, any licensed physician employed in such establishment being entitled to act as operating physician in abortion cases.

An Ordinance issued on 24 May 1970 prescribed the detailed procedures governing the submission of applications for abortion. The Ordinance also specifies that every woman who has had her pregnancy terminated must, before being discharged from hospital, be given advice on contraception. The State Medical Board is to issue, for the benefit

of physicians with the authority to render opinions in respect to applications for abortion and operating physicians (i.e. those physicians entitled to perform abortions), instructions aimed at facilitating the interpretation of the legislation now in force. In particular, it is to furnish these physicians with guidelines with a view to the adoption of a uniform system for interpreting the indications for abortion.

Iceland

Iceland was the first Scandinavian country to have passed a law dealing specifically with abortion and, as already mentioned elsewhere (see p. 8), was the first country in the world to have introduced (in a very explicit manner) the concept of medico-social indications. It does appear, however, that no provision was made for abortion on eugenic or ethical grounds.

Under the terms of Law No. 38 of 28 January 1935, an abortion may be performed where the pregnancy has not passed the 28th week and its continuance would clearly constitute a serious risk (in the evaluation of which social circumstances are taken into account) to the health of the woman. The operation is performed in an approved hospital on the basis of the substantiated report of two physicians (i.e. the physician in charge of the hospital where the operation is to take place and the physician who advised the woman to attend the particular establishment) certifying the necessity for the pregnancy to be terminated. If however the woman has been pregnant for more than 8 weeks, the abortion may be performed only if there exists a serious danger which cannot be eliminated by any other means.

It is interesting to note that Iceland has by far the lowest rate of legal abortions of all the Scandinavian countries, while also having the highest birth rate. According to statistical data published in 1969,³¹ the number of legal abortions per 1000 live births is 13 in Iceland, the equivalent figure for Sweden being 80.

Norway

In Norway, a radical reform of abortion law had been advocated by the Association of Physicians as early as 1930 and an initial bill was actually put forward by the Government some years later. Due to opposition in Parliament, however, it was not until 1960 that a specific law on the subject of abortion was finally passed, thereby legalizing the situation obtaining *de facto* in regard to the practice of abortion.

The Law of 11 November 1960 (which apparently came into force only in February 1964) provides for legal abortions on the basis of indications which had already been incorporated in the Finnish Law of 1950 and the Danish Law of 1956, namely : 1. medical and medico-social indications; 2. eugenic indications (existence of a serious risk of the child being affected by a grave illness or a serious physical or mental defect, as a result of a hereditary defect in either parent, an illness in the woman during pregnancy or a lesion in the embryo); 3. ethical indications (pregnancy resulting from certain acts punishable under the Penal Code).

Except if there are special reasons, an abortion may not be performed after the first trimester. The operation may be performed only in an approved hospital or clinic, in principle by a specialist in surgery or gynaecology.

The procedures for obtaining authorization for an abortion were laid down by the above-mentioned Law of 11 November 1960 and by a Decree for its implementation, dated 20 December 1963. It is specified that the application must come from the woman concerned, although if she is a minor or not in possession of all her mental faculties one of her parents or her guardian or administrator may be consulted. If the woman is mentally ill or mentally retarded to a marked extent, the application may be made by one of the parents or the guardian. If the woman is married and lives with her husband, he must express his opinion if this formality is justified and there are no special reasons to the contrary.

Before authorization for abortion is granted, a physician must have submitted a written application for the admission of the woman to hospital. In addition to personal information concerning the woman, this application must contain as many details as possible, concerning medical, social and other matters relating to the woman's request; it must be accompanied by a written statement from the woman (or, in appropriate cases, her mother or father, guardian or administrator) expressing her wish to have her pregnancy terminated.

Except in emergency cases, authorization for abortion is given by two physicians, viz. a physician (not on the staff of the hospital department where the operation is to be carried out) appointed by the provincial medical officer, and the physician in charge (or his deputy) of the department of surgery or gynaecology in which the operation is to be performed (or, in other cases, the physician who is to perform the operation).

If there are grounds for considering that the woman's request may be justified by her living conditions, an investigation must be carried out before any decision is taken. In all cases, the woman must state what resources and other means of assistance she will have available if her pregnancy is brought to term.

If the woman's application for an abortion is refused, the provincial medical officer may, on the recommendation of the woman's attending physician, apply for her to be admitted to another hospital so that the question may be re-examined by other physicians.

The agreement of the provincial medical officer must be obtained before performing an abortion in certain cases, notably when there is opposition on the part of an administrator or an objection by one of the parents or the guardian (this applies where these persons are entitled to express their views on the application) and when the woman is married and her husband has not given his consent to the operation.

In a recent report on the implementation of the Norwegian legislation in practice, Grünfeld and Strøm³⁹ note that the law is not being interpreted uniformly either by general practitioners or abortion committees. The actual number of applications has increased from about

4800 in 1965 to about 7500 in 1969, the proportion approved varying from 50 % to 90 % depending on region.

Sweden

The basic abortion law in Sweden dates from 1938, successive amendments having been made in 1946, 1963 and 1964. The 1938 Law limited the grounds for abortion to danger to life or health (such danger could be due to disease, physical defect or "weakness"), pregnancy resulting from a criminal act, and expectation of a hereditary mental or physical defect. The number of legal abortions during the years following the adoption of this Act was small, scarcely more than 500 per year.¹² The 1946 amendment added the medico-social indication of "anticipated weakness" (i.e. where there is reason to assume, taking into account the woman's living conditions and other circumstances, that her physical or mental strength would be seriously impaired by childbirth and child care) while that of 1963 (introduced as a result of the discovery of the teratogenic effects of thalidomide) legalized abortions where there are grounds for believing that, as a result of intra-uterine damage, the child will suffer from a serious disease or deformity.

An abortion for reasons other than disease or physical defect may not be performed after the 20th week of pregnancy, although the National Board of Health and Welfare may make exceptions to this provision and authorize abortions until the end of the 24th week.

An Order for the implementation of the Law was issued on 9 September 1938 and amended on 10 May 1963. In brief, the procedure is that authorization is obtained, in most cases after application to an abortion consultation centre, either from two physicians (one of whom must hold an official post, the other being the physician who is to perform the operation) or from the National Board of Health and Welfare (which is required to deal with all cases where the indications are eugenic or where the woman is incapable of giving valid consent on account of a mental disorder). Within the National Board of Health and Welfare, matters dealing with abortion (and sterilization) are the responsibility of the social psychiatry committee. Tietze¹⁰⁶ reports that abortions performed on the authority of a certificate signed by two physicians accounted for one-fourth of all cases in 1966 and one-third in 1967.

There is no doubt that there has been a progressive liberalization in the interpretation of the 1938 Law in its amended version.³³ Between 1963 and 1968, for example, the number of legal abortions almost tripled, increasing from 3528 to 11 060 over the six-year period. Moreover, in 1968 only 6 % of abortions were performed on medical indications, compared with 90 % on medico-social indications.³¹

The Swedish law on abortion makes no distinction between Swedish and foreign citizens. According to Borell and Engström,¹² numerous foreign women have come to Sweden to obtain an abortion. In one hospital, for example, some 700 foreign women applied for an abortion between 1963 and 1965; authorization was however granted for an abor-

tion in only 3% of the cases. The reason for this is that it is usually impossible to carry out the investigation required by Swedish law.

In 1965, a committee of inquiry on the question of abortion was appointed by the Minister of Justice.⁸³ In his instructions to the committee, the Minister suggested, *inter alia*, a reform of the legislation in the direction of attaching greater importance to the woman's own attitude in the abortion situation. The committee's report was expected to be submitted in 1970 or early 1971.

AUSTRALIA AND NEW ZEALAND

The legal provisions governing abortion in *Australia* are contained in the penal legislation of the States. With the exception of South Australia, where an important reform of the abortion law was recently introduced, the various States do, however, have provisions which are largely similar. In New South Wales, for example, Sections 82 and 83 of the Crimes Act, 1900, are based on the corresponding provisions of the British Offences against the Person Act (see p. 44) and prescribe, in particular, that any woman who unlawfully administers to herself any drug or noxious thing or uses other means with the intent to procure her miscarriage is liable to the prescribed penalty. The same applies to persons unlawfully procuring or attempting to procure miscarriages in others. The term "unlawfully" used in the Sections cited had, until May 1969 (see below), never been juridically interpreted in Australia. The relevance of the *Rex v. Bourne* case in this respect is obvious and, in fact, according to the Annual Report for 1968 of the Australian Medical Association, "it has been accepted for many years that termination of pregnancy by a qualified medical practitioner acting *bona fide* to preserve the life of a pregnant woman is not unlawful. The phrase 'preserve the life' has been given a wide meaning, where serious risk to mental or physical health is indicated on medical grounds".⁶

The question of reform of Australian abortion legislation has been broached, notably in an editorial published in the *Medical Journal of Australia* in 1968⁶⁷ and in an article by Bretherton which appeared in the same journal in 1969.¹⁵ In recommending the amendment of the existing laws, Bretherton notes, on the basis of his observations in medical practice, that requests for abortion are made in spite of religious, moral and social upbringing, legality, age, marital status, financial position, colour, creed or nationality. When a woman has made up her mind, nothing will deter her from seeking abortion. This constitutes, according to Bretherton, one of the principal reasons for seeking the reform of the law.

The movement in favour of abortion law reform in Australia received an obvious impetus with the adoption of new legislation in Great Britain. In the course of 1968, certain of the State Governments were contemplating changes in the legislation and in consequence the National Health

and Medical Research Council issued a statement, in October of that year, recommending certain broad principles for such legislation.⁷ Thus far, only South Australia has actually introduced new legislation, the Act in question being the Criminal Law Consolidation Act Amendment Act, 1969 (assented to on 8 January 1970). Its substantive provisions are very similar to those of the Abortion Act 1967 of the United Kingdom (see p. 45) except that the reference to the injury to the physical or mental health of any existing children of the family is omitted. It does moreover include one proviso not present in the latter statute, namely a residence requirement; it is specified that, other than in emergencies (i.e. where termination is immediately necessary to save the life or prevent grave injury to the physical or mental health of the pregnant woman), abortions are not authorized unless the woman has resided in South Australia for a period of at least two months before the termination of her pregnancy. The Governor is empowered to make regulations for the implementation of the Act.

In Western Australia, an initial Bill providing for termination of pregnancy on medical, eugenic, medico-social and ethical indications was ruled out of order but a similar Bill, modified to overcome certain constitutional objections, has been submitted. According to Winton,¹¹³ its fate is uncertain.

In Victoria, the State Government is reported to have affirmed that it does not intend to modify the existing abortion legislation in that State in any way. However, an important ruling (at a trial for alleged abortion) was made on 22 May 1969, which served to clarify the interpretation of the word "unlawfully". The judge's statement was as follows: "For the use of an instrument with intent to procure a miscarriage to be lawful the accused must have honestly believed on reasonable grounds that the act done by him was: (a) necessary to preserve the woman from a serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of pregnancy would entail; and (b) in the circumstances not out of proportion to the danger to be averted . . .".¹¹³

The *New Zealand* law on abortion is substantially the same as that existing in England prior to the adoption of the Abortion Act of 1967. The pertinent provisions are contained in Sections 220-223 of the Crimes Act, 1908, these sections being clearly based on the corresponding provisions of the Infant Life (Preservation) Act of 1929 and the Offences against the Person Act of 1861. The ruling in the *Rex v. Bourne* case appears to be applicable in New Zealand.^{17, 74} In a comment on the present law, Brown has stated that "no one would contend that it is achieving any reduction in the number of illegal abortions performed" in New Zealand.¹⁷

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Legislation

Algeria

Ordinance No. 66-156 of 8 June 1966 embodying the Penal Code (Sections 304-313) (see *Int. Dig. Hlth Leg.*, 1967, 18, 519)

Argentina

Law No. 17567 of 6 December 1967 introducing amendments to the Penal Code (see *Int. Dig. Hlth Leg.*, 1969, 20, 191)

Australia

New South Wales

Crimes Act, 1900 (Sections 82 and 83)

South Australia

Criminal Law Consolidation Act, 1935-1966, as amended by the Criminal Law Consolidation Act Amendment Act, 1969 (Section 82a)

Brazil

Decree-Law No. 2848 of 7 December 1940 embodying the Penal Code (Section 128)

Bulgaria

Instructions (of 1956) of the Ministry of Public Health and Social Welfare on the interruption of pregnancy (see *Int. Dig. Hlth Leg.*, 1957, 8, 605)

Decree No. 61 of 28 December 1967 to increase the birth rate

Instructions No. 188 (of 1968) of the Ministry of Public Health and Social Welfare to regulate the artificial interruption of pregnancy and to prevent criminal abortion (see *ibid.*, 1968, 19, 589)

Decree No. 220 of 16 March 1968 to promulgate the Penal Code (see *ibid.*, 1970, 21, 533)

Cambodia

Crown Ordinance No. 103 of 23 July 1934 promulgating the Penal Code (Section 459)

Cameroon

Law No. 67-LF-1 of 12 June 1967 introducing the Penal Code (see *Int. Dig. Hlth Leg.*, 1969, 20, 397)

Canada

Criminal Code of 1953-54, as amended by the Criminal Law Amendment Act, 1968-69 (Section 237)

Chile

Decree No. 725 of 11 December 1967 promulgating the Sanitary Code (Section 119) (see *Int. Dig. Hlth Leg.*, 1969, 20, 47)

Colombia

Decree No. 2300 of 4 September 1936 to adopt the definitive text of the new Penal Code (Section 389)

Colombia (continued)

Decree No. 2831 of 23 September 1954 embodying the Code of Medical Ethics (Section 10) (see *Int. Dig. Hlth Leg.*, 1955, 6, 680)

Costa Rica

Penal Code of 21 August 1941 (Section 199)

Cuba

Social Protection Code. Entered into force 10 October 1938 (Section 443)

Czechoslovakia

Penal Law (No. 86) of 12 July 1950 (Section 218)

Law No. 68 of 19 December 1957 on the artificial interruption of pregnancy (see *Int. Dig. Hlth Leg.*, 1959, 10, 283)

Government Decree No. 126 of 21 December 1962 to establish committees for the interruption of pregnancy in pursuance of the Law on the artificial interruption of pregnancy (see *ibid.*, 1964, 15, 80), as amended, *inter alia* by Government Decree No. 54 of 6 July 1966 (see *ibid.*, 1968, 19, 173)

Instruction No. 28 of 17 September 1966 of the Ministry of Health to determine the procedure for the interruption of pregnancy (see *ibid.*, 1968, 19, 174)

Denmark

Law No. 163 of 18 May 1937 on the measures to be taken in cases of pregnancy, etc., as amended by the Law of 31 March 1938 (see *Bull. Off. int. Hyg. publ.*, 1939, 31, 403)

Law No. 177 of 23 June 1956 on the measures to be taken in cases of pregnancy, etc. (see *Int. Dig. Hlth Leg.*, 1957, 8, 377)

Law No. 120 of 24 March 1970 on the interruption of pregnancy, etc. (see *ibid.*, 1970, 21, 572)

Dominican Republic

Law No. 1690 of 19 April 1948 on abortion

Eastern Germany

Law of 27 September 1950 relating to the protection of mothers and children and the rights of women (Section 11) (see *Int. Dig. Hlth Leg.*, 1952, 4, 58)

Instructions of 15 March 1965 for the implementation of Section 11 of the Law of 27 September 1950 relating to the protection of mothers and children and the rights of women, as amended on 5 June 1965

Ecuador

Penal Code of 22 March 1938 (Section 423)

Ethiopia

Penal Code of 23 July 1957 (Articles 528-536)

Finland

Law No. 82 of 17 February 1950 relating to the interruption of pregnancy (see *Int. Dig. Hlth Leg.*, 1951, 2, 559)

Law No. 239 of 24 March 1970 on the interruption of pregnancy

Ordinance No. 359 of 29 May 1970 on the interruption of pregnancy

France

Law of 12 February 1810 promulgating the Penal Code, as amended

Decree of 29 July 1939 with regard to family matters and the birth rate in France, as amended (see *Bull. Off. int. Hyg. publ.*, 1941, 23, 260)

Decree No. 53-1001 of 5 October 1953 to codify the legislation on public health (Articles L.161-1 and L.645-L.647) (see *Int. Dig. Hlth Leg.*, 1954, 5, 660), as subsequently revised

France (*continued*)

Decree No. 55-1591 of 28 November 1955 embodying the Code of Medical Ethics and replacing public administrative regulations No. 47-1169 of 27 June 1947 (Section 38) (see *ibid.*, 1956, 7, 603)

Honduras

Decree No. 94 of 25 June 1964 to promulgate the Fundamental Law with regard to the Association of Physicians of Honduras (Sections 105-107) (see *Int. Dig. Hlth Leg.*, 1965, 16, 326)

Hungary

Order No. 1047/1956 of 3 June 1956 of the Council of Ministers on the regulation of interruption of pregnancy and repression of abortion (see *Int. Dig. Hlth Leg.*, 1958, 9, 536)

Ordinance No. 2/1956 of 24 June 1956 of the Ministry of Health on the regulation of interruption of pregnancy (see *ibid.*, 537)

Iceland

Law No. 38 of 28 January 1935 embodying instructions concerning contraception and therapeutic abortion

India

The Indian Penal Code (Act XLV of 6 October 1860). Edition of 1951 (Section 312)

Ivory Coast

Law No. 62-248 of 31 July 1962 to establish a Code of Medical Ethics (Section 38) (see *Int. Dig. Hlth Leg.*, 1965, 16, 363)

Japan

Law No. 156 of 13 July 1948, including amendments up to 21 April 1960. (The Eugenic Protection Law) (see *Int. Dig. Hlth Leg.*, 1965, 16, 690)

Korea (Republic of Korea)

Penal Code of 3 October 1953 (Sections 269 and 270)

Mexico

Penal Code of 13 August 1931 (Sections 333 and 334)

Morocco

Crown Decree No. 181-66 of 1 July 1967 embodying a Law to amend Articles 453 and 455 of the Penal Code, and to repeal the Dahir of 10 July 1939 (see *Int. Dig. Hlth Leg.*, 1968, 19, 217)

New Zealand

Crimes Act, 1908 (Sections 220-223)

Norway

Law No. 2 of 11 November 1960 on the interruption of pregnancy in certain cases, as amended by Law No. 1 of 21 June 1963 (see *Int. Dig. Hlth Leg.*, 1965, 16, 148)

Crown Decree of 20 December 1963 for the implementation of the Law of 11 November 1960 on the interruption of pregnancy (see *ibid.*, 151)

Pakistan

The Pakistan Penal Code (Act XLV of 6 October 1860). 4th Ed. (1960) (Section 312)

Paraguay

Penal Code of 18 June 1914 (Section 352)

Peru

Decree-Law No. 17505 of 18 March 1969 promulgating the Sanitary Code (Sections 19-23) (see *Int. Dig. Hlth Leg.*, 1970, 21, 137)

Poland

Law of 28 October 1950 relating to the practice of medicine (see *Int. Dig. Hlth Leg.*, 1953, 4, 576)

Poland (continued)

Law of 27 April 1956 determining the conditions under which interruption of pregnancy is permissible (see *ibid.*, 1958, 9, 319)

Ordinance No. 68 of 11 May 1956 of the Minister of Health relating to the interruption of pregnancy (see *ibid.*, 321)

Ordinance of 19 December 1959 of the Minister of Health with regard to the interruption of pregnancy (see *ibid.*, 1962, 13, 140), as amended by the Ordinance of 13 January 1962 (see *ibid.*, 1963, 14, 454)

Instruction No. 5/59 of 19 December 1959 of the Minister of Health relating to the interruption of pregnancy (see *ibid.*, 1964, 15, 793)

Instruction No. 52/59 of 19 December 1959 of the Minister of Health relating to the performance, on ambulant patients, of operations for the interruption of pregnancy (see *ibid.*)

Portugal

Decree-law No. 40651 of 21 June 1956 approving the new Statutes of the Medical Corporation instituted by Decree-Law No. 29171 of 24 November 1938, and repealing Decree No. 38213 of 26 March 1951 and the Statutes of the Medical Corporation approved by Decree-Law No. 29171 of 24 November 1938 (Section 79) (see *Int. Dig. Hlth Leg.*, 1957, 8, 677)

Romania

Decree No. 463 of 30 September 1957 on the interruption of pregnancy

Decree No. 770 of 29 September 1966 of the Council of State regulating the interruption of pregnancy (see *Int. Dig. Hlth Leg.*, 1967, 18, 822)

Decree No. 771 of 29 September 1966 of the Council of State to amend the Penal Code (see *ibid.*, 823)

Instructions No. 819 of 19 October 1966 of the Minister of Health and Social Welfare to implement Decree No. 770 of 1966 regulating the interruption of pregnancy (see *ibid.*, 824)

Law No. 15 of 21 June 1968 promulgating the Penal Code (Sections 185-188) (see *ibid.*, 1969, 20, 316)

Senegal

Law No. 65-60 of 21 July 1965 promulgating the Penal Code (crimes and offences) (Section 305)

Decree No. 67-147 of 10 February 1967 embodying the Code of Medical Ethics (Section 35) (see *Int. Dig. Hlth Leg.*, 1967, 18, 844)

Singapore

The Abortion Act, 1969

The Abortion Regulations, 1970

Spain

Law of 24 January 1941 to safeguard the birth rate by combating abortion and propaganda in favour of birth control (see *Bull. Off. int. Hyg. publ.*, 1945, 27, 103)

Decree of 23 December 1944 approving and promulgating the revised version of the Penal Code (Sections 411-417)

Sweden

Law No. 318 of 17 June 1938 concerning the interruption of pregnancy (see *Bull. Off. int. Hyg. publ.*, 1939, 31, 422), as amended by Laws No. 392 of 12 June 1942, No. 210 of 17 May 1946, No. 213 of 5 June 1963 (see *Int. Dig. Hlth Leg.*, 1966, 17, 152) and No. 172 of 20 March 1964 (see *ibid.*)

Crown Order No. 571 of 9 September 1938 for the implementation of Law No. 318 of 17 June 1938 concerning the interruption of pregnancy (see *Bull. Off. int. Hyg. publ.*, 1939, 31, 423), as amended by Crown Order No. 354 of 10 May 1963 (see *Int. Dig. Hlth Leg.*, 1966, 17, 152)

Switzerland

Swiss Penal Code of 21 December 1937 (entered into force 1 January 1942) (Article 120)

Canton of Geneva

Regulations of 12 December 1953 to enforce Section 33 of the Law for the implementation of the Swiss Penal Code of 7 December 1940 (see *Int. Dig. Hlth Leg.*, 1955, 6, 737), as amended by Regulations dated 26 January 1960

Canton of Vaud

Order of 12 November 1954 on the legal interruption of pregnancy, as amended by the Order of 4 January 1966 (see *ibid.*, 1968, 19, 237)

Syria

Legislative Decree No. 96 of 26 September 1952 prescribing regulations for the practice of medicine (see *Int. Dig. Hlth Leg.*, 1954, 5, 125)

Thailand

Act of 13 November 1956 promulgating the Penal Code (Sections 301-305)

Tunisia

Law No. 65-24 of 1 July 1965 relating to abortion (see *Int. Dig. Hlth Leg.*, 1966, 17, 406)

Turkey

Law of 13 January 1960 on medical ethics (Section 22) (see *Int. Dig. Hlth Leg.*, 1965, 16, 404)

Law No. 557 of 1 January 1965 concerning family planning (see *ibid.*, 1966, 17, 985)

Decision No. 6/8305 of 12 June 1967 of the Council of Ministers embodying Regulations concerning the interruption of pregnancy and the practice of sterilization (see *ibid.*, 1968, 19, 426)

Union of Soviet Socialist Republics

Decree No. 471 of 18 November 1920 of the People's Commissariats for Health and Justice for the protection of the health of women

Decree of 27 June 1936 of the Central Executive Committee and the Council of People's Commissars on the prohibition of abortion, etc.

Decree of 23 November 1955 of the Praesidium of the Supreme Soviet of the USSR modifying the prohibition of abortion

Instructions of 28 December 1955 on the carrying out of operations for the termination of pregnancy

United Kingdom

The Offences against the Person Act 1861 (Sections 58 and 59)

The Infant Life (Preservation) Act 1929

The Abortion Act 1967 (see *Int. Dig. Hlth Leg.*, 1968, 19, 887)

The Abortion Regulations 1968 (see *ibid.*, 1969, 20, 807), as amended by the Abortion Regulations 1969

United States of America^a*Alaska*

An Act relating to abortions. (Adopted in 1970)

Arkansas

An Act to define abortion. (Adopted March 1969)

California

Penal Code (Section 274)

The Therapeutic Abortion Act of 1967 (paras. 25950-25954 of the Health and Safety Code). (Entered into force 8 November 1967)

Colorado

Act relating to abortion. (Signed into law 25 April 1967)

^a In addition to the States cited, Delaware (1969), South Carolina (1970) and Virginia (1970) have also adopted new abortion laws.

United States of America (continued)*Georgia*

Abortion law adopted 27 February 1968

Hawaii

An Act relating to abortion and amending Chapter 768, Hawaii Revised Statutes. (Entered into force 11 March 1970)

Kansas

Abortion law adopted March 1969

Maryland

Abortion law adopted 25 March 1968

New Mexico

An Act relating to abortion, etc. (Adopted March 1969)

New York

An Act to amend the penal law, in relation to justifiable abortifacient acts by physicians in the course of their practice of medicine. (Entered into force 1 July 1970)

North Carolina

Abortion law adopted 9 May 1967

Oregon

An Act relating to abortion; creating new provisions; amending ORS 465.110, 677.188 and 677.190; repealing ORS 163.060; and providing penalties. (Adopted May 1969)

Washington

An act relating to abortion; adding three new sections to chapter 249, Laws of 1909 and to chapter 9.02 RCW; and providing for submission of this act to a vote of the people. (Passed Senate 30 January 1970, passed House 4 February 1970)

Uruguay

Penal Code, as amended by Law No. 9763 of 24 January 1938 (Section 328)

Venezuela

Decree of 22 June 1964 embodying the Penal Code (Section 435)

Yugoslavia

Decree of 11 January 1952 relating to justifiable interruption of pregnancy (see *Int. Dig. Hlth Leg.*, 1953, 4, 450)

Decree of 16 February 1960 on the conditions and formalities for authorization of the interruption of pregnancy (see *ibid.*, 1961, 12, 619)

Instruction No. 06-1164 of 28 October 1960 of the Secretary of Public Health to the Federal Executive Council implementing the Decree on the conditions and formalities for authorization of the interruption of pregnancy (see *ibid.*, 622)

Decree of 26 April 1969 to promulgate the General Law on the termination of pregnancy (see *ibid.*, 1969, 20, 573)

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