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POLAND: ANALYSIS OF GAINS AND LOSSES ARISING
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INTRODUCTION

1. This study attempts to analyse changes in the Polish situation from the pre-Solidarity period onwards, under fifteen subject headings. Each subject is split into four parts: before Solidarity; the Solidarity period, August 1980-December 1981; after Solidarity, 13 December 1981-1986; and a brief comment on the nature of the changes described and how far they are due to Solidarity. The study omits the numerous temporary repressive measures introduced during Martial Law.

I. TRADE UNIONS

2. Before. The pre-1980 unions (CRZZ) were under Party control. The leader was always a Politburo member. No pluralism and no right to strike. All workers in an enterprise belonged automatically. No democracy in the unions: policy handed down from the leadership, which acted as a vehicle for passing the authorities' decisions on pay, productivity etc. down to the workforce. Because of lack of accountability the unions were weak on issues such as health and safety, although they funded some benefits for workers, e.g. holidays.

3. During

- (i) creation of independent, self-governing trade unions was the top item in the August 1980 agreements.* The Gdansk Agreement included reference to the right to strike. It conceded the PZPR's leading role, which the Szczecin Agreement omitted;
- (ii) Solidarity was registered by the courts (as were Rural Solidarity and Craftsmen's Solidarity). But the old law on trade unions (1949) remained in place. A draft of a new law was still in preparation when Martial Law was declared;
- (iii) Solidarity's statutes included the following points:-
 - free and secret elections to all posts
 - office-holders in other organisations banned from senior Solidarity positions (i.e. the PZPR could not gain control)
 - pluralism of unions.

The leading role of the Party was not included but appeared in an annex to the statutes;

- (iv) Rural Solidarity was the first post-war trade union for private farmers. Craftsmen's Solidarity also.

* Signed by striking workers and the Government, incorporating workers' demands.

4. After

- (i) new trade unions were created based on a law of October 1982. This contains the following points:
 - (a) secret and democratic elections. Central authorities (OPZZ) elected by indirect representation;
 - (b) the right to strike (not on political issues) as a final solution after all stages of negotiation have failed. No strikes yet. But some unions have threatened action (e.g. railway workers, 1985);
 - (c) pluralism – in theory. In practice impossible, as only one official union in each factory. Individual unions can decide whether to affiliate to the OPZZ: about three-quarters belong;
 - (d) leading role of the Party accepted;
 - (e) unions are independent of state administration. Unimportant in practice;
 - (f) membership of a union is voluntary. Coercion occurs occasionally;
- (ii) after a slow start about 60% of the workforce are now union members. Percentage varies widely from factory to factory and depends i.a. on strength of past and present Solidarity influence and on effectiveness of factory union officials on issues such as pay, health and safety. At national level the OPZZ pronounces on socio-economic issues and sometimes has genuine and heated disputes with the authorities, e.g. over working hours. It has claimed to be preparing a report on the extent to which the August 1980 Agreements have been fulfilled, but this idea may have lapsed,
- (iii) there is no post-Martial Law equivalent of Rural or Craftsmen's Solidarity;
- (iv) Solidarity takes a strong anti-union line and has not tried to infiltrate the unions, which keep well clear of all strictly political issues. Sporadic strikes (independent of the unions) are often instigated by Solidarity activists.

5. Comment. The 1982 unions are far more effective as trade unions than the pre-1980 CRZZ, though they still have many limitations and may develop a tendency to re-centralise activity. The improvement is a direct result of the Solidarity period, following which it was clearly in the authorities' interest to set up an organisation which would deal with the workers' socio-economic grievances from the Solidarity era both at local and national level. The most important change is probably electoral democracy, which motivates especially factory officials to get results as they are accountable to the workforce.

II. WORKERS' SELF-MANAGEMENT COUNCILS

6. Before. Workers' councils were set up in 1956 following Gomułka's return. For a few months they had wide powers on paper similar to those described below. But they were soon emasculated because of Party opposition. No further occurrence in Poland before 1980. Elsewhere in Eastern Europe: imposition from above by the Czech authorities in 1968 failed. Yugoslavian workers' councils the only successful example.

7. During

- (i) in the 1980 Gdansk Agreement, the Government pledged itself to make proposals concerning a law on self-management;
- (ii) the law was passed in September 1981: although a compromise version, it contained most of the major points Solidarity wanted. These include:
 - (a) councils are independent of the state administration, unions, political organisations;
 - (b) representatives are chosen in free and secret elections;
 - (c) councils may, i.a.:
 - pass and amend the annual plan
 - take decisions on investment
 - decide whether the enterprise should join an industrial combine
 - decide on how to divide profits remaining within the enterprise
 - take decisions on dismissal/choosing of enterprise director
 - block director's decisions if these were taken without consulting the council or contradict a previous council decision;
 - (d) councils may exchange experiences with each other;
 - (e) if a dispute between council and management cannot be resolved internally it is decided by the courts.

8. After

- (i) workers' councils were suspended during the first months of Martial Law;
- (ii) they now exist in nearly 90% of state enterprises. The Solidarity report "Five Years After August" estimates that three-quarters of councils are inactive, because they are controlled by Party or administration and/or because of worker apathy. 3-15% defend themselves against attempts to restrict their activity;
- (iii) the law of 1981 has not been amended, but councils' rights have been curtailed through other laws: examples include:
 - (a) directors of over 1000 enterprises designated "of vital importance to the economy" are chosen by the relevant Minister or *Voivod*;
 - (b) the 1983 law on special legal measures during the period of overcoming the socio-economic crisis allows a council to be suspended or dissolved if the enterprise's founding organ considers it to be going against basic interests of society;

- (c) amendments to the trade union law passed in 1985 gave the unions more say in distributing enterprise funds;
- (iv) councils wishing to make full use of their powers often have to contend with arbitrary behaviour from management. Court decisions are often biased against the council and sometimes clearly contradict the law. The most active councils, sometimes Solidarity dominated, face SB harassment. In a recent statement Solidarity called for the first time on its members to engage in council activity.

9. Comment

- (i) the existence of workers' councils is one of Solidarity's major achievements. The law on self-management is the only one, apart from the law on state enterprises, to have survived intact from the Solidarity period. In allowing the workforce to elect an independent body the law is unique in Poland and, indeed, within the Warsaw Pact;
- (ii) many observers of self-management comment that the councils' powers are being gradually eroded from above. Although this process is counteracted by the increased experience of workers who participate in the councils, enactment of the law leaves much to be desired.

III. ECONOMIC REFORM

10. Before. Experiments occurred sporadically in post-Stalinist Poland, notably in 1956. None of them lasted and there was little discussion of the issue immediately preceding August 1980. Hungary's reforms, started in 1968, were the only real East European precedent, though Yugoslavia is also relevant.

11. During

- (i) the Gdansk Agreement stipulated that real measures should be taken to extract Poland from economic crisis. The Agreement refers to independence of enterprises as a prerequisite; and to workers' self-management;
- (ii) during the Solidarity period the authorities also conceded the need for reform based on the "3 S's" – independence of enterprises, self-financing, and worker self-management – and involving e.g. removal of subsidies for consumer and industrial goods, an end to central allocation of industrial supplies, more stress on efficient exporting. Discussion in the Party and Solidarity on methods of reform was widespread. In July 1981, the Party committed itself at the IX Congress to a far-reaching programme of economic reform;
- (iii) the first two laws on the reform were passed before Martial Law: the laws on workers' self-management (see II.) and state enterprises. The latter defines the enterprise as "an independent, self-governing and self-financing economic unit, with legal status". But it is imprecise on some vital issues such as the exact relationship between the founding organ (e.g. ministry, local authorities) and the enterprise.

12. After

- (i) the first laws passed by the Sejm following the imposition of Martial Law were on the economic reform. In general the legislative process on reform was little affected by Martial Law, although some laws passed (e.g. on overcoming the socio-economic crisis) limited the scope of the reform laws. By 1984 the legal framework for reform was in place;
- (ii) the reforms have not been effectively applied because of vested interest at all levels. The authorities seem to lack the political will to overcome this. They continue to insist that reform is irreversible but the main stress is on the need for organisation and efficiency rather than on the "3 S's". Thus the reform spirit engendered during the Solidarity period has faded, and few people now believe in it, especially given the continuing economic problems.

13. Comment. It seems likely that the authorities would sooner or later have initiated a reform process, given the economic crisis. But Solidarity's precipitation of the crisis undoubtedly forced them to act much more quickly and the programme which emerged was certainly more radical, in its stress on independence and self-management, than it would have been in different circumstances. When under the stimulus of Solidarity the authorities were forced to re-think policy, however, the two sides produced similar ideas.

IV. LABOUR ISSUES

A. Working Hours and Free Saturdays

14. Before. A 46-hour working week, with most Saturdays worked.

15. During. Solidarity achieved a 42-hour week. One of its most fiercely pressed demands was for all Saturdays to be free. It achieved one working Saturday per month.

16. After. Some regulations passed on workingtime, e.g. allowing working week to be raised to 46 hours in special circumstances (law on overcoming the socio-economic crisis, 1983, and decree, February 1986). Average number of Saturdays worked per month is now two. Some groups, e.g. miners, work more.

17. Comment. This Solidarity gain has been partly eroded but remains significant.

B. Employment

18. Before. Issue not debated. Dismissal for political reasons occurred, e.g. after 1976 riots.

19. During. No demands in the August 1980 Agreements, although calls were subsequently made for amendment to the Labour Code in favour of the employee.

20. After

- (i) law on work shirkers, 1982, required the unemployed to take up public work as ordered. Imprisonment possible for hard cases. Proposals for tougher amendments being considered at present;

- (ii) law on overcoming the socio-economic crisis, 1983, allowed employers to require 6 months' notice in special economic need;
- (iii) proposed changes to Labour Code would i.a. make dismissal easier and voluntary departure more difficult;
- (iv) dismissals for political reasons occurred during Martial Law. Now only occasional, but the requirement for employees to sign an undertaking which includes a reference to, e.g. the Constitution, has allegedly become more common, thus allowing politically motivated dismissals for breaking that part of the undertaking.

21. Comment. A negative development, largely motivated by the economic crisis.

V. SOCIAL BENEFITS

22. Before. Poor: a legitimate subject for grievance, though rarely expressed.

23. During

- (i) Solidarity demanded (Gdansk Agreement):
 - (a) 3-year maternity leave;
 - (b) lowering of the pension age;
 - (c) establishment of a social minimum;
 - (d) raising the lowest pensions, annuities and wages to the social minimum;
- (ii) the Agreement allowed for the new unions to set up a study centre to examine such issues. Later on in the Solidarity period, other demands were made concerning social benefits;
- (iii) Solidarity achieved (a) and (b), and was partially successful with (d).

24. After

- (i) (a) and (b) remain in force, although because of the labour shortage pensioners are being encouraged to work,
- (ii) the authorities are continuing the process of "revaluing" the lowest pensions, (d);
- (iii) the family benefits system has been improved and benefits are proportionately higher;
- (iv) there is no social minimum, though this is an issue the new unions have adopted and it is discussed, e.g. in the press;

- (v) the new unions have said they will set up a research institute to study issues such as social benefits, clearly an echo of Solidarity. No progress visible yet.

25. Comment. Gains for Solidarity.

VI. PRICE RISES

26. Before. Decided arbitrarily by the authorities, often with dramatic results (e.g. 1956, 1970, 1976, August 1980).

27. During. In August 1980, Solidarity demanded wage rises in compensation for price rises.

28. After. The authorities now have a policy of introducing relatively small price rises at frequent intervals so that (a) decisions are more acceptable to the public, and (b) rises bear some relation to economic reality. The most important are advertised well in advance, and "social consultation" takes place with the unions and others. Reform demands removal of subsidies, but little success so far because of fear of public discontent.

29. Comment. An improvement in methods, due to Solidarity, although not what the latter wanted. The economic situation will necessitate further stiff price rises.

VII. THE ENVIRONMENT

30. Before. Very low on economic priority list: little publicity. Enterprises not (?) penalised.

31. During. Pressure from Solidarity: public awareness grew considerably.

32. After. A high profile issue in the press and for discussion by Party, Government and at local level; local bodies are becoming more active. Penalties for polluting enterprises, not severe enough to be effective. Financial resources far larger than pre-1980, although still far too small.

33. Comment. A Solidarity gain, although heightened awareness in the rest of Eastern Europe would have affected Poland without Solidarity.

VIII. PRIVATE AGRICULTURE

34. Before. Private farmers had no guarantees of status and no privileges. The lowness of state procurement prices for produce in the pre-1980 years contributed to the economic crisis.

35. During.

- (i) the Gdansk Agreement stipulated equality for private farmers;
- (ii) the 1981 Rzeszow Agreement (Rural Solidarity) included a commitment to pass a law guaranteeing the inviolability of peasants' private property, especially land; granting them the right to inherit; and recognising private agriculture as a permanent element in Poland.

36. After

- (i) the Constitution was amended in 1983 to include a "guarantee of the continuity of private farms";

- (ii) right of inheritance granted;
- (iii) all sectors of agriculture declared equal, and all will be guaranteed profitability (i.e. state procurement prices will be reasonable);
- (iv) private farmers granted proper pension rights for the first time;
- (v) there is no equivalent of Rural Solidarity. A law on farmers' associations of 1982 lays down which organs may represent farmers, giving the latter no independent choice.

37. Comment. A Solidarity gain, although economic considerations might have won some concessions in due course. But (unlike workers) farmers have no improved union representation.

IX. UNIVERSITIES AND SCHOOLS

38. Before. These conformed except in 1968. The 1969 law on higher education gave very wide powers to the Minister, e.g. he oversaw university cadre policy and statutes; chose the rector and vice-rectors and could dismiss them; could remove a student suspected of crimes against public order without any disciplinary procedure.

39. During

- (i) most university staff (over 90%?) joined Solidarity. Free university elections were held in 1981 at which non-Party rectors and deans got elected;
- (ii) teaching of sensitive subjects like history and literature improved. Better school programmes for teaching these two subjects were put into use.

40. After

- (i) an unprecedentedly liberal law on higher education, strongly influenced by the Solidarity period, was passed in 1982. It included the following points:
 - (a) the Senate may freely elect the rector, pro-rectors and deans. The Minister is told afterwards and his objection is binding (e.g. he refused the elected Rector of Warsaw University in 1984);
 - (b) a university may fix its own statute: the Minister may subsequently object and get it changed;
 - (c) students may freely elect self-governing bodies with responsibility for students' general interest;
- (ii) PAN (Polish Academy of Sciences) has its own law. It failed to initiate changes before Martial Law, and was allegedly much easier to control in 1982 onwards as a result;
- (iii) the Higher Education Law was amended in 1985 to remove some of the more liberal provisions, e.g.

- (a) candidates for posts of rector, pro-rector and dean must be cleared with the Minister in advance;
 - (b) a university bases its statutes on a pattern issued by the ministry. The Minister has to agree the final version;
 - (c) students' self-government is limited to teaching and living conditions;
 - (d) the law allowed for all academic staff holding administrative posts to be verified for the latter. In November 1985 about 70 staff were dismissed from their administrative posts, keeping their academic positions;
- (iv)
- (a) schools maintained much of the new history teaching programme, literary history fared less well;
 - (b) a number of teachers' social demands, e.g. on living conditions, were fulfilled;
 - (c) the 1983 law on special regulations to overcome the socio-economic crisis allowed the Voivod to suspend/dismiss a teacher for illegal or unsuitable actions. The opposition estimates that a large number of teachers were dismissed following the imposition of Martial Law. The process of verification continues: a country-wide operation was carried out in 1986, although apparently with little effect. The teachers' code now includes a reference to loyalty, which enables politically motivated teachers to be dismissed/disciplined for infringing the code. In general, sanctions against teachers are locally inspired and vary widely according to the views of the local Party or schools board.

41. Comment. Legal situation for universities better than pre-1980: but the major Solidarity gain of 1982 was reduced to a minor one in 1985. In general the atmosphere in universities is improved because Solidarity took such a strong hold there. Policy towards teachers a negative point, but was itself a response to the change in atmosphere caused by Solidarity.

X. PRESS CENSORSHIP

42. Before. Quality of newspapers, radio and TV very poor. The 1946 decree on censorship defined its powers very loosely and gave no right of appeal.

43. During

- (i) Solidarity's demands included (Gdansk 1980):-
 - (a) access to media for religious groups;
 - (b) right to appeal against censor's decision;
 - (c) the broadcasting of Sunday Mass (granted almost instantly);

- (ii) the official press improved vastly in quality and a large number of unofficial publications appeared, produced by, e.g. Solidarity, the Church. Radio and television were less affected;
- (iii) an independent Journalists' Association was founded;
- (iv) Law on Censorship, July 1981. A major improvement which allowed recourse to the administrative courts in case of a dispute and clearly defined the rights of the censor.

44. After

- (i) Law on Censorship amended July 1983. Criteria for censorship toughened, e.g. by an amendment forbidding material to "disseminate contents which in themselves constitute a crime";
- (ii) the press (but not TV or radio) is still far better than before 1980. Straight criticism on strictly political matters is unusual, although the range of points of view can be considerable. Economic and social matters are treated very critically. Constructive criticism is encouraged by the authorities. It is claimed that censorship was laxer in 1982-83 than 1984-86. Religious publications are more numerous than before 1980, although they have difficulties with paper supplies and censors. The authorities have just passed applications for two new independent publications, although these will face similar problems;
- (iii) the Journalists' Association was disbanded and replaced by a front organisation;
- (iv) in 1984 a press law was passed. This obliges interviewees (e.g. factory managers) to reveal facts to journalists. It allows right of reply to those attacked in the press;
- (v) a vast variety of underground publications is produced.

45. Comment. A major Solidarity gain, although still many negative points.

XI. CULTURAL AND HISTORICAL CENSORSHIP

46. Before. Strict. Artists' associations were cyphers.

47. During

- (i) culture revived during Solidarity. New independent artists' associations were formed. Unofficial performances took place: official ones improved. Censorship of books (e.g. Miłosz) and films (e.g. Wajda) was far looser;
- (ii) it became possible to talk and write much more freely about recent Polish history, e.g. the Warsaw Uprising, the post-war years, 1956 and 1970.

48. After

- (i) artistic associations were destroyed, including the Writers', Actors' and Fine Artists' Associations. Others had their presiding boards dissolved. New associations

were set up: as many of the best people have refused to join them they are principally front organisations for official policy;

- (ii) pro-Solidarity artists with administrative posts in, e.g. films or theatre were removed. A number emigrated, and others refused to work for State-sponsored events;
- (iii) the Church has assumed a major role in organising and hosting cultural events, thus influencing the development of non-establishment culture which before 1980 would not have had any forum;
- (iv) book publishing policy remains better than pre-1980, although severely hampered by lack of paper.

49. Comment. The Solidarity revival was itself a permanent gain for Polish culture. As a result of this revival, the present situation is better than pre-1980, but still strictly controlled. Following several senior personnel changes post-Xth Congress the authorities claim to want greater openness: we shall see.

XII. DEMOCRACY AND "NATIONAL RECONCILIATION"

50. Before. No efforts to improve public participation in political life. The Sejm (Parliament) recorded 6 "no" votes between 1976 and 1980, 4 by the same deputy.

51. During

- (i) nothing in August 1980 Agreements. But by the end (a) Solidarity was demanding democratic elections to local councils and control by the latter over local government administration; (b) Solidarity intended to conduct a referendum on public confidence in the government and the Sejm elections;
- (ii) other proposals included a second chamber for the Sejm, and a Social Council for the National Economy. These were realised in much scaled down versions, as the Sejm Socio-Economic Council and the Consultative Economic Council, both with advisory status only. Solidarity and the authorities offered widely differing proposals for a council, including representation of both sides, with a more general political brief;
- (iii) the Sejm started to criticise the authorities.

52. After. A number of concessions to "democracy" have been made by the authorities since Martial Law as part of their policy of national reconciliation:-

- (i) the authorities replaced the all-party National Unity Front (FJN) with the Movement for National Rebirth (PRON). While maintaining some characteristics of a front organisation and being boycotted by those with opposition connections invited to participate, PRON has produced its own "dissidents" whose proposals, e.g. for democracy and economic reform, are sometimes radical and enrich debate on such issues;

- (ii) a new law on local councils was passed in 1984, giving them power over local administration and wide financial powers. In practice the councils have made little use of the law, although their record is beginning to improve;
- (iii) the Sejm is more independent than pre-1980, although criticism and "no" votes come from a handful of deputies. Sejm commissions often improve draft laws passed to them by ministries etc;
- (iv) local and national elections in 1984 and 1985 took place under new electoral laws which were a slight improvement of those pre-1980, e.g.
 - (a) they allowed a better mix of candidates (the number of non-Party places in the Sejm was raised);
 - (b) objections could be made to the conduct of the elections or those elected;
- (v) the Party has now promised democratisation of the electoral law and work on this is proceeding;
- (vi) other measures being considered since the Xth Congress include a law on referenda, a law introducing an Ombudsman, and a Consultative Council. The latter would be attached to the Council of State. Members would include Party figures, independent intellectuals, Catholics and possibly some people with opposition connections;
- (vii) indications in recent weeks that some new associations, e.g. on environment, may be allowed to function.

53. Comment. The authorities' change of approach is a Solidarity gain which has brought a limited amount of diversity to political life. Increased emphasis on democracy since Xth Congress, although outcome of this as yet uncertain.

XIII. THE PARTY

54. Before. Membership satisfactory. Little internal Party democracy; closed (with isolated exceptions, e.g. the Experience and Future discussion group) to new ideas and policies, as demonstrated by its complete lack of ability, and failure even to attempt, to prevent the economic crisis.

55. During. By December 1980 about one-third of Party members belonged to Solidarity. The horizontalist movement tried to initiate horizontal contacts between Party organisations, a revolutionary concept. This failed but the IXth Congress in 1981 took place in unprecedentedly democratic conditions, with secret votes and many senior figures failing to get re-elected.

56. After. The failure to keep control during 1980-81 and the imposition of Martial Law caused an enormous loss of confidence. Many of the best people left the Party, especially the younger ones. The Party is now regaining confidence, but lasting changes are visible which can be seen as a direct result of the Solidarity period, e.g.:

- (a) Party democracy is greater than pre-1980; cadre policy is much more demanding with greater accountability;

- (b) the need to work with non-Party people and choose them for jobs where they are the best candidates (a Solidarity demand) is stressed;
- (c) national reconciliation is a key part of policy: words like consultative, consensus, pluralism come from the Solidarity vocabulary.

57. Comment. A positive result of the Solidarity period and the economic crisis, reinforced when Gorbachev came to power.

XIV. THE CHURCH

58. Before. Relationship with State fluctuated considerably. Position among the population unchallenged and further strengthened on Cardinal Wojtyla's election as Pope in 1978.

59. During. Relationship both with State and Solidarity fluctuated. But major steps forward for the Church:-

- (i) it assumed an important role in negotiations between the authorities and Solidarity, raising its political profile considerably;
- (ii) Catholic intellectual life: some KIKs (Catholic Intellectuals' Clubs) played a major role in Solidarity, as did individual Catholics as advisers. The Catholic press was able to diversify and many new publications were started;
- (iii) Church attendance went up even more, as Church services acted as centrepieces for Solidarity activity, e.g. political sermons, blessing of strikers;
- (iv) controls by the authorities relaxed considerably:-
 - church building increased rapidly
 - Mass was broadcast on radio (as promised in the Gdansk Agreement);
- (v) the Church sponsored cultural and academic events.

60. After

- (i) the Church now constitutes the only alternative to the State's monopoly of public life. Its powerful role as moderator continues: the authorities try to persuade the Church to sanction their policy of national reconciliation, e.g. by approaching prominent Catholics to sit in the Sejm or on the newly proposed Consultative Council. Glemp and Jaruzelski meet. A Church/State commission meets regularly. The Church expresses its disapproval of policy, e.g. on political prisoners, verification of teachers etc, while discouraging priests from giving excessively political sermons;
- (ii) while the Church's material activities are restricted by the authorities (e.g. failure to set up the Agricultural Fund, too little media access), it is in a better position than before Solidarity, e.g. church building, publication and cultural activity are all stronger.

61. Comment. The Church has gained from Solidarity. Also from the Polish Pope.

XV. JUSTICE

62. During. No major changes occurred during the Solidarity period, although demands were made, e.g. for amendments to the Penal Code and increased independence of the judiciary. This section therefore deals with the permanent changes brought in after December 1981.

63. After

- (i) amendments to the Penal Code:-
 - (a) new political charges introduced: Article 282a whose definition of illegal activity is deliberately vague; article on participation in a union which is illegal or has been dissolved; article on organisation of strikes*;
 - (b) extension of accelerated court procedure to cover i.a. some political crimes. Can give sentences up to 3 years. Trial takes place in 48 hours (no time to arrange proper defence), evidence allegedly often sketchy;
 - (c) use of warrant charges for minor offences, including some political ones, although none carrying a prison sentence. A policeman provides the judge with a written charge: judge assesses without questioning defendant;
- (ii) powers of Milicja and security services (SB):-
 - (a) these were formalised in a law dated July 1983, e.g. use of weapons, tear gas, water cannon. The law gave a definition of the services' powers as investigation, prevention and action not only where a crime is suspected but in reference to other deeds and phenomena (undefined) which threaten the security of the state and public order;
 - (b) the Popiełuszko affair shows that the security *apparat* can be made publicly accountable in extreme circumstances. Moreover, General Kiszczak, as Minister of the Interior and a close colleague of Jaruzelski, is much more accountable internally to the Party and Government. But individual cases of harassment continue. Scale impossible to estimate;
 - (c) as before, the Ministry of Internal Affairs (MSW) gives or withholds permission to hold meetings or to form associations. It usually says no. Recent talk of possible relaxation;
- (iii) position of the judiciary:-
 - (a) this has always been dependent on the administration, e.g. if a judge allows an appeal on any charge he must justify his decision in person to the State Prosecutor's Office. The Ministry of Justice and other bodies can appeal against Supreme Court sentences;

* In October some such offences, while remaining in the Penal Code, were also entered in the Misdemeanour Code which carries much lighter penalties (up to 3 months' imprisonment or a fine). This gives the authorities a wider choice of methods for dealing with dissent.

- (b) during Solidarity, judges and advocates demanded self-government. A relatively liberal law on the advocacy was passed in 1982 but has not been allowed to function properly; the Barristers' Union retained some of its self-governing powers acquired in 1980/81 until 1983, when a complaint from the Ministry of Justice was upheld by the Supreme Court;
 - (c) following Martial Law a Committee for Maintenance of Law and Order was created: this has no legal basis for its existence, just a general overseeing brief;
 - (d) in 1984 the Ministry of Justice acquired the right to appeal against regional court sentences. It also reviews these courts' sentencing policy every few years and can move judges who have performed inadequately;
 - (e) some opposition figures claim that the judiciary is less willing to act independently now (where possible) than in the 1970s. Because of lack of evidence and collective memory, this issue is extremely difficult to assess;
- (iv) new courts and new duties for the courts:-
- (a) the Supreme Administrative Court. Set up in 1980 (not because of Solidarity pressure, but would probably have been a cypher without the Solidarity period's influence). An important innovation which allows citizens to complain about treatment by the administration (e.g. decisions on housing rents, pensions). It allegedly has control over more than 90% of administrative decisions and considers thousands of cases each year. c.35% of complaints are upheld. It has no brief to investigate complaints against the MSW, e.g. on banning of meetings;
 - (b) the Tribunal of State. Set up in 1982, to ensure that people in top state positions behave according to the Constitution and the law. But it does not cover actions by senior Party figures. Inactive: designed to deal with the leadership of the late 1970s, who were pardoned by the 1983 Amnesty;
 - (c) the Constitutional Tribunal. Set up in 1985, to ensure that new laws or regulations conform to the Constitution and the existing laws. A private citizen cannot appeal to it. So far, has considered 3 cases and decided against the Government in 2 of these. Future uncertain as yet, although could become important;
 - (d) role of the Courts. Extended to cover registration of trade unions, foundations, farmers' associations and some other groups: previously done by State administration. An improvement;
- (v) Martial Law. In 1983 the Constitution was amended to make Martial Law a response to external threat only, and to allow a new "State of Emergency" specifically for internal threat – thus simplifying the mechanism for dealing with the latter;

- (vi) Political Prisoners. Solidarity demanded their release and the end of persecution for political views in the Gdansk Agreements. The number of prisoners has fluctuated widely since 1982, the authorities having adopted a policy of regular amnesties. They are extremely sensitive to domestic and international opinion on the issue (any major arrest, trial or ill-treatment gets wide publicity) and claim not to want any political prisoners. These are new and useful developments and the situation is undoubtedly better than before Solidarity. But the future is very uncertain.

64. Comment. In terms of laws passed, the situation is worse than before 1980. Increasing legislative control has been a key factor in Jaruzelski's policies in all areas: the changes recorded here are a result both of this and of the specific desire to tighten up on the opposition following Solidarity. This negative trend is only partly compensated by increased respect for the rule of law (i.e. the security services are less likely to act against or outside it than before 1980) and by the authorities' recognition of the need for "national reconciliation" and sensitivity to Western criticism.

XVI. COMMENTS

65. (i) Poland pre-Solidarity and Poland 1986 are different in very diverse areas. Most of the changes are positive. All can be linked to Solidarity. Some result directly from Solidarity demands (e.g. working hours) while others owe much indirectly to Solidarity's influence (e.g. the character of the Party). The extent to which Solidarity gains were maintained following Martial Law and up to now varies widely;
- (ii) the achievements have been maintained in different ways:
- (a) by new legislation passed. This has either survived intact (e.g. workers' councils) or, even with retrograde amendments, is still better than pre-1980 (e.g. censorship, working hours, universities);
- (b) by persistent social activity and pressure – itself a direct result of Solidarity. This has both prevented a return to pre-1980 (e.g. culture, the Church) and brought the authorities to make concessions (e.g. democracy, policy on price rises);
- (iii) both (a) and (b) illustrate the important point that Martial Law did not bring down a curtain on all aspects of the Solidarity period. While thousands were interned and Solidarity was driven underground, the programme of passing laws on economic reform continued. The liberal higher education law was passed in 1982;
- (iv) Some Solidarity gains have been eroded gradually, e.g. press censorship was allegedly lighter in 1982-83 than in subsequent years; the 1982 higher education law was amended for the worse in 1985;
- (v) other gains are being slowly consolidated, e.g. concern over the environment, the authorities' increasing emphasis on (limited) broader participation in government;

- (vi) a few changes are negative, e.g. tightening up of legal policy and labour regulations.

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