

1517

INTERNATIONAL COMMISSION OF JURISTS
CONFERENCE ON THE RULE OF LAW IN A CHANGING WORLD
CAPE TOWN, SOUTH AFRICA 20 JULY 1998

ICJ IN A NEW SOUTH AFRICA -
REMARKS AT THE OPENING CEREMONY

The Hon Justice Michael Kirby AC CMG
President of the International Commission of Jurists

INTERNATIONAL COMMISSION OF JURISTS
CONFERENCE ON THE RULE OF LAW IN A CHANGING WORLD
CAPE TOWN, SOUTH AFRICA 20 JULY 1998

ICJ IN A NEW SOUTH AFRICA -
REMARKS AT THE OPENING CEREMONY*

The Hon Justice Michael Kirby AC CMG
President of the International Commission of Jurists

THE ICJ's COMMITMENT

It has been a privilege to convene this international conference and the triennial meeting of members of the International Commission of Jurists (ICJ) in Cape Town, South Africa. Even a decade ago few would have thought that such an assembly would have been possible.

* Revised transcript based upon remarks made at the Opening Ceremony of the conference on 20 July 1998.

It is no coincidence that the Acting Chairman of the Executive Committee of the ICJ is Professor Kofi Kumado, a distinguished African law teacher and human rights leader from Ghana. Nor is it a coincidence that the Secretary-General of the ICJ is Mr Adama Dieng, a distinguished jurist from Senegal. These two lawyers are leading the ICJ into the new millennium. They offer hope, inspiration and example to the lawyers and non-lawyers of Africa and the world.

Things were not always so hopeful in South Africa. Forty years ago, the ICJ presented its report on an inquiry into the problems created for the rule of law by the systematic application of the principle of racial separation in South Africa¹. In that report, the Commission concluded that the principle of apartheid then practised in South Africa was morally reprehensible and violated the rule of law:

"The evil of the policy of separation of races lies in the presumption of racial superiority translated into the deliberate infliction of an inferior way of life on all those who are tainted by non-white skins. Not permitted to choose their own way of life, the non-white population are reduced to a permanent political, social, economic and cultural inferiority".

¹ International Commission of Jurists, *South Africa and the Rule of Law*, 1960, Geneva.

Even before the report was delivered, in 1958, the ICJ had arranged for a British lawyer, Mr Gerald Gardiner QC (later Lord Chancellor of Great Britain) to attend the Treason Trials which were launched in South Africa². Subsequently Dr Edvard Hambro attended the first sitting of the trials which took place on 1 August 1958³. It is sobering to think that exactly forty years ago the 91 accused, on trial for their lives, were sitting in cold prison cells waiting for their trials to commence. The ICJ was vigilant in its observance of those trials. It was there when it was needed.

In February 1959, Mr Edward St John QC, a leading Australian barrister and member of the Commission, attended the adjourned treason trials when they re-opened. His report contained an extremely sad indictment on the then state of human rights and the rule of law in South Africa⁴. In his report he stated:

"Behind the legal complexities of the Treason Trials, and reaching beyond even the vital question of guilt or innocence of the accused, there lies the abiding questions and problems of the Union of South Africa. What is to be the future of this troubled country? What is to be the role of the white man in coming generations? Will the policy of *apartheid* really work? How long can the non-European be held down? ...

2 His report is published in *Journal of the International Commission of Jurists*, Vol 1 No 1 pp 43-58 (1958).

3 ICJ *Bulletin* No 8 December 1958.

4 ICJ *Bulletin*, No 9, August 1959, 21.

These questions and problems demand an answer, even of those who might prefer to pass over the surface and enjoy the country and its amenities without worrying over its politics. ... [They] haunt every visitor to the country".

It took nearly forty years for the main answers to these questions to be given. But we, the jurists of today, can take pride in the commitment of the ICJ in those perilous times. We can take satisfaction from the achievement by South Africans of the release of their country from the bonds of apartheid.

THE NEW SOUTH AFRICA

When that release bore fruit in the democratic and multi-racial Constitution and the election of President Mandela to head the new South Africa, the President did not forget the role of the ICJ. He did not forget that in 1963-64 the ICJ had sent observers to his own trial at which he was charged with conspiracy. He remembered the fact that the ICJ had been there on the journey with him. It had participated with other fighters for freedom of every race who resisted apartheid from the beginning. When the invitations to the inauguration of President Mandela were issued, one was included for the Chairman of the ICJ. At that time I was serving as Chairman of the Executive Committee. I accepted the invitation. I will never forget the sunny day in Pretoria when the constitutional change was finally effected. The new flag was unfurled. The jets passed overhead with the colours of a multicultural country. The President stood in the sunshine to be honoured by visiting and local dignitaries

and by his own people. In a moment of great irony and symbolism he was saluted by the heads of the Armed Forces of South Africa. Their medals gleamed in the sunlight - most of them doubtless won in battles fruitlessly endeavouring to postpone the moment of transition.

The ICJ honours President Nelson Mandela. It is another of those ironies that its conference in Cape Town convened as the nation was celebrating the eightieth birthday and marriage of its President, admired throughout the world. The ICJ offers felicitations to the President on his birthday and on his marriage.

There is a human right to love. Love is present in so many of the statements of Nelson Mandela. Some people are embarrassed even to refer to love. But I have always thought that at the heart of respect for the life and dignity of other human beings is the core value of human love. Those who have sufficient love for their fellow creatures can only respect the lives and dignity of those who share with them this fragile planet.

OPENING THOUGHTS

The conference in Cape Town was inspired by the opening remarks of its distinguished participants. Advocate Nono Goso, speaking on behalf of the South African organising committee reminded us that the rule of law and even the independence of the judiciary are, on their own, not enough. It is essential that the law

which rules should be constantly reformed, updated and made to conform to human rights and to justice. It is also essential that the judiciary should be knowledgeable about human rights and respectful of those rights in all that it does.

Professor Kofi Kumado in his remarks reminded us that the Commission was meeting at a time close to the fiftieth anniversary of the *Universal Declaration of Human Rights*. South Africa was one of the few states which, at the time of the adoption of the *Universal Declaration*, refused to approve of its terms. But now, the Minister of Justice has assured us of South Africa's complete endorsement of universal human rights principles and of its intention to report to the United Nations on its National Action Plan on Human Rights on the very day that the world will be celebrating the fiftieth anniversary.

As Professor Kumado also reminded us, the understanding of the fundamental rights of humanity did not stand still in 1948. Medical and scientific advances now present some of the most complex challenges to human rights. For example, the Human Genome Project, as it develops, unravels new and complex dilemmas to which the ICJ in the future must make a contribution. These are issues on the ICJ's challenging agenda.

Our Secretary-General, Mr Adama Dieng, reminded us of the need to look backwards and to remember the achievements of the ICJ and those who contributed to those achievements. To the work, for example, of his predecessor, Mr Niall McDermot QC, a valiant

champion of human rights and dedicated supporter of African struggles towards their achievement. This conference will celebrate the twentieth anniversary of the establishment of the Centre for the Independence of Judge and Lawyers. That was a brave idea which the ICJ took under its wing and which is now one of the most important activities in which the organisation is involved. I pay tribute to the American Association for the ICJ and to Mr William Butler, Honorary Member, for conceiving the idea of this Centre. Its work now offers vital support to the Special Rapporteur on the Independence of the Judiciary and of Lawyers (Dato' Param Cumaraswamy, himself an ICJ Commissioner from Malaysia).

The Secretary-General also reminded us that the ICJ must constantly confront new problems and dilemmas. For a long time now, we have been addressing the issues of economic, social and cultural rights and the problems of poverty and corruption as they affect the attainment of human rights. Typically, in this conference, the ICJ will explore new themes of crucial importance to the world of today. Most importantly, it will examine the implications for the rule of law and human rights of the growing power of multi-national corporations which, at least to some extent, because of their great economic power, stand outside the effective discipline of international human rights agencies and even of national laws. With the collapse of the command economies, the ideology of the market has taken control of the imagination of most politicians throughout the world. But markets are volatile as we have lately seen. This conference will provide much needed stimulus to the consideration

by jurists of the implications of globalisation of the economies of nations and regions of the world. It is a timely theme of the greatest contemporary importance.

As Mr Dieng reminded us, this is the last triennial conference this century. It has been a century of wars, of astonishing technology, of globalisation, but also of the mapping of fundamental human rights. On the brink of a new century, the ICJ must look forward. No better place in the world exists to do this than South Africa - a multi-racial country newly committed to constitutionalism and fundamental rights.

Finally, the Minister of Justice, the Hon Dr A M Omar MP formally opened the conference in an address dedicated to the key concepts of the Constitution of the new South Africa - equality and dignity of all. In a calm and steady voice, he acknowledged the faithful vigilance of the ICJ in the dark days of apartheid. He told us of how President Mandela had reminded him that it was Mr John Arnold QC who observed his trial in the 1960s. Mr Arnold, Lord Gardiner, Mr St John, Lord Elwin-Jones and many others - on behalf of the ICJ and on behalf of sister organisations, observed trials, held conferences, made speeches, engaged the media, and generally alerted the world to the outrageous injustices of apartheid. Some of these champions of freedom are now dead. But many of them, happily, like President Mandela are still alive.

Last week, in Australia, the Government of the French Republic honoured the surviving Australian veterans who fought during the First World War in the defence of France. They are now a hundred years of age and more. Not many of them are left. It would be a good thing if the Government of South Africa - or perhaps the ICJ itself - could similarly honour those people, famous as well as little known, who led South Africa and the world in the struggle against apartheid until it was banished from the earth. The Minister told us that the ICJ could claim some little part in the parentage of the new Constitution of South Africa. He spoke of the renewal of his country as part of the renaissance of Mother Africa. He is himself a renaissance man. Fortunate is South Africa in the many inspiring leaders it enjoys, in all constitutional branches of government, committed to justice for all, fundamental rights and the rule of law. Fortunate is the ICJ to have chosen South Africa at this brilliant moment in its history, to be the venue of the last triennial meeting and conference of the twentieth century. From this vantage point we can look into the next millennium and see a future of hope and the high road to greater freedom.