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INTERNATIONAL COMMISSION OF JURISTS
TRIENNIAL MEETING OF THE COMMISSION, CAPE TOWN,
SOUTH AFRICA

23 JULY 1998

ICJ - LOOKING TO A NEW MILLENNIUM

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

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OF PRESIDENTS AND MUSHROOMS

It is said in jest that the life of a President who holds office for three years is akin to that of a mushroom. In the first year, you are kept in the dark. In the second year, a lot of fertiliser is thrown at you. And in the third year you are canned and sent as far away as possible.

* Revised transcript based upon remarks made during the ICJ conference in Cape Town and on 21 July 1998 on the occasion of the last address to the Members of the Commission, Sections and Affiliated Organisations as President of the ICJ.

I would not quite describe my service as President of the International Commission of Jurists (ICJ) in those terms. But it has certainly been a journey of enlightenment, with a few rocky patches culminating in a magnificent conference at the Southern tip of Africa where my successor will be elected¹.

In a life divided into triennia, the intervals pass quickly, new challenges arise and new persons are attracted to the work of the ICJ. The first triennial meeting which I attended was held in 1986 in Nairobi, Kenya. The President of Kenya (Mr Daniel arap Moi) is the only Head of State of any of the countries in which triennial meetings have been held who is still in office. He attended our meeting with all the pomp and ceremony of a Viceroy. Yet the ceremony could not completely mask the problems for human rights which existed then, and still exist, in Kenya. Those problems have been the subject of a recent ICJ mission report. The focus of the meeting, under the stimulus of the then Secretary-General, Mr Niall McDermot QC, was on the newly adopted *African Charter of Human and Peoples' Rights*. The ICJ worked energetically and effectively to bring that Charter into operation. Having done so, it has now turned its attention to the

¹ Madame Justice Claire l'Heureux Dubé, a Judge of the Supreme Court of Canada was on 24 July 1998 elected to succeed Justice Kirby as President of the ICJ.

establishment of an African Court of Human Rights to which, it is hoped, South Africa will make a noted contribution.

The next triennial conference was held in Caracas, Venezuela in 1989. We met in an ancient and elegant chapel converted into a meeting hall. Our substantive business was concerned with a plan of action for the independence of the judiciary. We visited the local judges and talked with them candidly about their problems. For the first time I was bold enough to insist to my colleagues that the Commission members, and all of them, should have information on the finances of the ICJ and that the Commission should move to a more transparent financial and administrative style. This was the conference at which a young lawyer from Senegal, Mr Adama Dieng, made a big impression on the Commission members. He was to rise from responsibilities specific to the African continent to leadership of the Secretariat of the ICJ when, in due course, with great dignity and propriety, his health failing, Nial McDermott ultimately laid down the burden.

My third triennial meeting was at Cartigny in Switzerland in 1992. This meeting was held in the bitter cold of winter. However, it was warmed by the magnificent humanity of two fine servants of the ICJ. One of them, Joaquín Ruiz Jimenez, a leader in the vital work of UNICEF, was elected President. Another, the late John Humphrey of Canada, an Honorary Member, was specially recognised for his contributions to the ICJ and earlier to the drafting of the *Universal Declaration of Human Rights*, whose half-century we celebrate this

year. The substantive business of the Cartigny meeting was an extended consideration on the ICJ's government. This led to a number of reforms whose influence has continued within the organisation, encouraged by innovations introduced by Adama Dieng when he was eventually appointed Secretary-General.

In 1995, my fourth triennial conference, we met in Bangalore, India. As is not unusual in that remarkable and mystical country, the delegates were accorded a very warm welcome. They enjoyed Indian cuisine, dancing and culture of great beauty and variety. They saw court-houses and temples overgrown by bougainvillea. They heard from judges and lawyers committed to bringing the rule of law to the world's most populous democracy. The substantive business of that meeting concerned the lawyers' duties in relation to economic and social rights. The *Bangalore Principles* on that subject were adopted. It is hoped that, in time, they will encourage lawyers to overcome their reluctance to see as justiciable human rights those which are not specifically concerned with civil and political rights alone.

And now in Cape Town, South Africa in 1998, comes my fifth triennial meeting. As befits the ICJ, it is not content with a reflection on the past and on its own honourable part in the struggle against apartheid, although that has been mentioned. It has addressed future issues - such as the implications for fundamental rights and the independence of the judiciary of the globalisation of the world

economy and the challenges provided to human rights by the suggested exceptions to the principle of universality.

Each new triennium brings new members into the councils of the ICJ. Each addresses novel problems relevant to the mission of the ICJ. Each renews the enthusiasm and commitment of the organisation, its members, national sections, affiliated organisations and staff. Each new triennium is an opportunity to re-dedicate with fresh energy our remarkable institution to the service of the ideals which have motivated it from the first.

A CHANGE IN CULTURE

Shortcomings

It is appropriate, as I lay down my office as President, that I should give a short account of my stewardship. I accept that there are many areas in which the ICJ could and should do more than it has done. For example, although some notable programme activities have addressed the special needs of human rights and the rule of law in Central and Eastern Europe and the States of the former Soviet Union, the mighty challenges presented by the collapse of the USSR are so multifarious and complex that it has been impossible for the ICJ to respond with complete adequacy to the opportunities unexpectedly presented to it.

Furthermore, in programme subjects, the ICJ agreed to my proposal in 1993 that important new topics should be added to its agenda for future attention. The new topics have included:

- * Human rights specific to women and children.
- * Human rights and sexual orientation.
- * Human rights of persons living with HIV/AIDS.
- * Human rights and drug use or drug dependence.
- * Human rights and new technology - notably new information technology and the Human Genome Project.

In all truth, not a great deal has been accomplished by the ICJ on these topics. They remain on the agenda and it is my hope that they will have the ICJ's attention in the near future. The fundamental problem remains one of securing a proper financial base for the organisation. Without the assurance of adequate funding it is fruitless to add new and demanding programme items to the agenda of the ICJ. Those who wish to enlarge that agenda have a responsibility to assist in expanding its budget.

Achievements

Notwithstanding these difficulties and occasional failings, important achievements have been made in the last few years within the ICJ. Most of the credit for these achievements lies with the Secretary-General and the staff who, within extremely tight budgets, have worked tirelessly for the objectives laid down by the Executive Committee (EXCO) and the members of the Commission. Of the many achievements of the past two triennia in which I have held office, the following are those which I would like to mention specifically. I have given them particular support. They are achievements which add up to a significant change in the culture of the ICJ. That change will prepare the ICJ to meet the enormous challenges that lie ahead in the coming millennium.

1. ***Transparent procedures:*** The ICJ is now a much more transparent organisation. It has become better in informing the Commission members, the sections, the affiliated organisations, and the world at large, about the vast range of activities in which it is engaged and for which it merits credit. A website is being constructed on the Internet. A triennial report on activities has been published which presents attractively and informatively the extraordinary range of activities in which the Commission has been

engaged². I pay tribute to the Press and Publications Officer, Nicolas Bovay who, with the encouragement of the EXCO and the Secretary-General, has greatly improved the flow of information about the ICJ, not only within the organisation and to those connected with it but to the outside world. This should continue and expand.

2. **Transparent finances:** As I have mentioned, it was initially a source of surprise to me that the finances of the ICJ were kept confidential even from most members of the Commission. This was an old-fashioned administrative model. It was wholly out of keeping with a modern, energetic, non-governmental organisation committed to human rights. Eventually the EXCO of the ICJ adopted a policy of greater openness. In this it had the full support of Secretary-General Dieng. A statement of the balance sheet and change of general fund balances is contained in the triennial report on activities³. The Executive Committee itself receives the fullest data on finances. These are now available to all Commission members. The substance of them is shared throughout the Organisation. It is made available to donors and others who are interested. This is quite a change from the approach of the ICJ as I first knew it.

2 International Commission of Jurists, *Report on Activities - 1996 and 1997*, Geneva, 1998.

3 *Ibid*, at 68-69.

3. *Sections and Affiliated Organisations:* Connected with this flow of information and financial data has been a much greater sense of community with the ICJ sections and affiliated organisations. To some extent the ICJ statute was interpreted in the past as marginalising these bodies, vital for the real effectiveness of the ICJ. The membership of the Commission is, by law, confined to those who are elected by it from amongst the most distinguished jurists of the world. But they are few in number. They cannot hope to discharge on their own the enormous leadership role of the ICJ. Yet unless there is a flow of information from the Commission to sections and affiliated organisations and in return, it is extremely difficult, if not impossible, for each to stimulate and encourage the other. This is why, in my work as Chairman of the Executive Committee, I accepted the responsibility, after each EXCO meeting, to inform not only every Commission member, but all sections and affiliated organisations concerning the business of the meetings of the EXCO. This led to a much better flow of information. This has continued under my successors (Mr Fali Nariman and Professor Kofi Kumado). Moreover, the Secretary-General now reports regularly on his multifarious activities and those of the staff of the ICJ. This allows every person who is interested within the Organisation, and many beyond, to keep track of the activities in which the ICJ is involved. Organisations such as the ICJ must raise most of their funds from donors who are hard pressed by many worthy applications. One of the best ways by which the ICJ will do this is by bringing home to potential donors, and to its own members and affiliates, the

admirable, creative and vitally important work on which Commission members and staff are engaged.

4. *Involvement in the Sections:* On my election as a member of the Commission, I immediately became closely involved in the work of the Australian Section of the ICJ. I was elected President of that Section. I continue to be closely informed about the activities of the section. In part, I count it as a result of my efforts, that during my service as a member of the Commission, branches of the Australian Section of the ICJ have either been established or revived in virtually all parts of the Australian continent - from Perth in Western Australia to Brisbane in Queensland; from Darwin in the Northern Territory to Adelaide and Melbourne in the south, as well as Sydney. In my view it is not sufficient for a member of the ICJ to rest on his or her laurels and to point to the statute: contending that it envisages an elite organisation and not a membership one. The members of the Commission should, wherever possible, take an active part in the sections or affiliated organisations in their country. If there are no such bodies they should stimulate the establishment of a local section or affiliated organisation. In large and federal countries they should do so in all parts of the nation. In this way it will become possible to spread the message of the ICJ and to engage an increasing number of lawyers in the ICJ's work.

5. *Commission vacancies:* In the past, it sometimes happened that vacancies in the membership of the Commission remained unfilled for very long periods. This is something that should not

occur. It weakens the organisation at its heart. It means the effective under-representation of the regions of the world and the different legal traditions found in those regions. I have always given the highest priority to ensuring that the complement of the Commission is filled with a variety of lawyers coming from the judiciary, the practising legal profession and academic life. At present, of the 45 Commission members allowed by the statute, 40 positions are filled, leaving 5 presently vacant. This is a great improvement on times gone by.

Perhaps in the future it will be appropriate to reconsider the definition of the regions as presently adopted: Western, Africa, Asia and Latin America/Caribbean. Thus the "Western" region may need to be broken down into regions which reflect the special concerns of Western Europe and those of Central and Eastern Europe and the CIS States. The "African" region may need to be sub-divided to permit a more appropriate recognition of the special concerns of the rule of law, human rights and the independence of judges and lawyers in the Middle East or Arabic-speaking countries. "Asia" may need to be sub-divided into continental Asia and the Pacific States and Oceania which have, to some extent, distinct concerns in the areas of our mandate. The Americas may require some rethinking and reorganisation. The maximum number of Commissioners allowed by the statute may also need to be increased in reflection of the larger number of states which now call upon the ICJ for help when compared to the time when the present limit was fixed.

Of special satisfaction to me is the recent election of a Commission member from the United States of America⁴. Although, as the Acting Chairman of the EXCO (Professor Kofi Kumado) repeatedly and properly reminded members of the Commission, no country (even one so important for human rights and rule of law as the United States) had a *right* under the statute to election of a member, the longstanding involvement of United States lawyers in the work of the Commission and in issues of human rights made it natural that there should be a member from the United States, as indeed there was, continuously, until the retirement of Mr William Butler, now an Honorary Member. For reasons which need not now be explored, difficulties were at first experienced in the election of a candidate from the United States. When, eventually, the Executive Committee in 1998 made its recommendation, the election was concluded. It is my sincere hope that the new member of the Commission from the United States will be able to lift the profile of the ICJ in his country where its work tends to be little known amongst lawyers generally and in the wider community.

6. ***More women:*** Another change for which, with others, I take some credit is the commitment of the ICJ to the election of more women to the Commission and to the adoption of a more proactive

4 Mr Jerome Shestack, President of the American Bar Association.

stance on issues relevant to the mandate and to the specific concerns of women. At the Cape Town conference, the ICJ has been considering proposals to enhance the infusion of all of its activities with particular attention to the specific human rights and legal concerns of women. As an organisation dedicated to fundamental rights, it is completely inconsistent with the objectives of the ICJ to have irrelevant distinctions made in its policies, personnel and other activities based upon considerations such as gender, race, religion, sexual orientation, age, or other immutable features of humanity. The ICJ EXCO has adopted principles of equal opportunity and non-discrimination. Although it is necessary to achieve still further improvement in the election of women to the Commission, important progress has been made. Many of the women who now take part in our work are amongst those who are most insistent upon opening up the ICJ more effectively to young, new and different ideas⁵. For example, during the meeting of the Commission, Ms Vera de Melo Duarte Martins (member of the ICJ from Cape Verde) made a number of proposals to make the ICJ more approachable to the concerns of younger members of the legal profession throughout the world.

⁵ At the Cape Town conference, Madame Justice Claire l'Heureux Dubé of Canada was elected as the first woman President of the ICJ in succession to the author.

7. *Cooperation with others:* Because the ICJ is one, if not the oldest, of the international human rights bodies, and because of its priceless reputation and the uniformly high quality of its legal and other work, there has, in the past, been a tendency to keep a distance from other human rights bodies. This may have been an understandable strategy in times gone by. To some extent it may still be appropriate for "product differentiation". However, there is a great deal of room for mutually supportive cooperation between the ICJ and the many human rights bodies which have sprung up since the establishment of the ICJ nearly fifty years ago.

I have always considered that it is the creation of so many bodies which explains why we have lately seen an increase in the number of affiliated organisations rather than of ICJ sections. Forty years ago, it was natural to establish a section of the ICJ. At that time the ICJ was basically all that was on offer to inspire lawyers in their natural dedication to issues such as the rule of law, human rights and the independence of their profession. Now, there are many such bodies which vie for attention. I am glad to say that the ICJ today is working more effectively in cooperation with such bodies. I have myself endeavoured to do so. For example, I have worked closely with Interights, an important human rights body operating out of London. I have quite recently taken part with the President of the International Bar Association (Mr Desmond Fernando PC, himself a Commissioner of the ICJ from Sri Lanka) in a conference in Hong Kong on issues relevant to the activities of the ICJ and the IBA. Other Commission members (Mrs Gladys Li QC,

Hong Kong, and 'Dato' Param Cumaraswamy, Malaysia) also took part. There is more room for cooperation of this kind and I hope that it will increase.

8. *UN activities:* During my term I have always encouraged the use of ICJ members as special office-holders of the United Nations. In recent years several of our Commissioners have been called upon to serve as Special Representatives or Special Rapporteurs for the Secretary-General of the United Nations or the Commission on Human Rights. Amongst those members of the Commission who have fulfilled these important and challenging tasks have been Her Excellency Mrs Mary Robinson SC (Ireland) who is now the High Commissioner for Human Rights; Mr Christian Tomuschat (former ICJ member from Germany)⁶; 'Dato' Param Cumaraswamy (Malaysia)⁷, Mr Diego Garcia-Sayán (Peru)⁸ and Professor Theo van Boven (Netherlands)⁹. Professor Yozo Yokata (Japan) was, before his election to the Commission, Special Rapporteur on Burma (Myanmar). I served as Special Representative for Human Rights in

6 UN Co-ordinator of the Truth Commission in Guatemala.

7 Special Rapporteur on the Independence of the Judiciary and of Lawyers.

8 Member of the UN Working Group on Enforced Disappearances.

9 Member of the UN Commission on the Elimination of Racial Discrimination.

Cambodia. In addition to the service by members of the Commission in this regard, members of the staff of the Commission have also been called upon to serve. Thus the Secretary-General has held special responsibilities with respect to Haïti¹⁰. Ms Mona Rishmawi¹¹ and Mr Alejandro Artucio¹² have also accepted high office in the United Nations with my full support and approval. It is natural that a body of highly talented and experienced lawyers, such as the ICJ, will provide a fund of experience upon which the Secretary-General of the United Nations and the High Commissioner for Human Rights may wish to call. In my view the ICJ should work closely with the Secretary-General, the High Commissioner, the Commission on Human Rights and all human rights bodies of the United Nations whenever called upon to contribute to the work of the United Nations consistent with the ICJ's mission.

9. *Turnover - EXCO:* Before my election as Chairman of the EXCO it had often been the case that that office, in many ways the most important in the ICJ, was held by one person for extended periods (often 15 years, the maximum term of membership of the

10 UN Independent Expert on the Situation of Human Rights in Haïti.

11 UN Independent Expert on the Situation of Human Rights in Somalia.

12 UN Special Rapporteur on the Situation of Human Rights in Equatorial Guinea.

Commission). This was not desirable. I do not say that the previous convention of long service was inappropriate to the ICJ at the time that it was observed. But in my view it is certainly inappropriate now. So talented are the members of the Commission that ordinarily the Chairman of the EXCO should serve for one term only. In this way the many able members of the Commission could expect, during their service, to play a part on the Executive Committee and, if willing and available, to be elected to a leadership role in the Commission. This is the way that new ideas and fresh inspiration are brought into an organisation such as the ICJ. True to my commitment, I retired after one term as Chairman of the Executive Committee. I believe that future Chairmen will likewise serve for a single term. I consider this to be another important change in the culture of the Organisation which has now been effected.

10. *Turnover in the Presidency:* Similarly, I have declined suggestions that I should serve for more than one term as President. Again, we have in our midst lawyers of the greatest distinction who properly aspire to be President of the ICJ. It may even be appropriate in the future to consider a term of office as President shorter than a full triennium. However that may be, I hope that, by example, I may in this matter have contributed to a new tradition which will ensure that the leadership of the ICJ is more in tune with fast changing times and with the ever altering perspectives of human rights issues and the matters relevant to the rule of law, the independence of the judiciary and of the legal profession. President Nelson Mandela has insisted that he will retire short of his full term

in order to hand over the reins of office to a younger successor who will have the responsibility of leading South Africa into the new age. In this, as in so many other respects, President Mandela gives leadership by example. How different is his conduct from that of the military and civilian rulers of so many African and other countries who cling remorselessly to office when their proper time has passed. There will, I believe, be no more such long-term office-holders in the ICJ. The same spirit of self-denial should, in my view, be practised by members of the Executive Committee and by other office-holders within the ICJ. If my example is not precedent enough, let them take the example of Nelson Mandela.

EXHILARATION AND ENTHUSIASM

And so, I lay down the office of President of the ICJ. I express thanks to my colleagues who entrusted the office to me for the past three years. I offer my respects to the Secretary-General, Mr Adama Dieng, to the Director of the Centre for the Independence of Judges and Lawyers, Ms Mona Rishmawi, and to the other loyal and dedicated members of the ICJ staff past and present. I pay tribute to the Honorary Members who are a reservoir of deep experience and great wisdom.

When Giovanni Cardinal de' Medici was elected Pope and took the name Pope Leo X in 1513, he is said to have written to his brother: "God has given us the Papacy - let us enjoy it"¹³. To my successors I would say that they should embark upon the office with the same sense of exhilaration and enthusiasm. Of course, the coffers of the ICJ are more frugal and will prevent the gross extravagances to which Leo X submitted the Papacy, thereby precipitating the advent of the Protestant reform movement within Christendom. The exhilaration and enthusiasm of the Presidency of the ICJ should be addressed to renewing the organisation from within and constantly taking it back to its fundamental mission as this is expanded and changes with each new triennium.

On the brink of a new millennium it can be said that many of the fundamental problems which led to the establishment of the ICJ in the early 1950s remain. But new and puzzling challenges also lie ahead. Whenever the President, or any other officer or member of the ICJ, becomes discouraged by the seemingly insuperable problems and inadequate resources he or she should reflect upon the struggle of Nelson Mandela and of his compatriots of every race and creed in South Africa. We who have been privileged to meet in Cape Town, at this special time will leave with words ringing in our

13 B W Tuchman, *The March of Folly*, Cardinal, 1984 at 126.

ears from many of the leaders of the South African struggle - Archbishop Desmond Tutu, Chief Justice Ismail Mahomed, Justice Arthur Chaskalson, Justice Albie Sachs, Minister Dr A M Omar and the many other South African jurists and leaders who lifted their voices and lived to see wrongs righted and rights secured. For the ICJ as, I trust, for South Africa, the best days lie not in the achievements of the past. The best days lie ahead.