

## JUSTICE AT HOME AND ABROAD

BY

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It is not often that I am in a position to address a Commonwealth gathering in a whole variety of roles. But that I can today: I can speak to you, as you have invited me to, as the Commonwealth's Secretary-General; or I can join in the welcome to you extended by His Excellency the Governor-General and Prime Minister Seaga as a Caribbean man myself; or I can welcome you even more intimately, as did the Minister of Justice, by drawing on the proudest of my connections with Jamaica - my membership of the Jamaican Bar. My years of practice at the Bar in this vibrant and vital democracy were among the happiest years of my professional life. An occasion such as this brings many memories flooding back - memories of my Chambers at 20 Duke Street; of great leaders of the Bar, like Manley and Blake and DaCosta; of solicitors who contributed so much to the high standards of the profession, like Leslie Ashenheim and Douglas Fletcher; and of many, many others in the profession here whose contributions to the law over many generations have made Jamaica worthy of this occasion, and your coming worthy of Jamaica.

At least in part, I welcome you in each of these roles. The formal role as Commonwealth Secretary-General may be more orthodox than the others; but is not without its detractors. When I had to urge the Commonwealth to condemn the gross human rights abuses of President Amin, he dismissed me as a mere "functionary". Not so long ago, when I had to urge the Commonwealth to stand resolute against apartheid and respond to the moral imperative for sanctions against its perpetrators, an English newspaper much read on suburban trains dismissed me as the holder of a "janitorial office". These are some of the hazards of office. Sometimes, even in the Commonwealth, the game is not cricket; and whatever the game, there are always those who, finding it uncomfortable to play the ball, resort to playing the man.

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\* The Eighth Commonwealth Law Conference was held in Ocho Rios, Jamaica in September 1986. The opening remarks by the Commonwealth Secretary-General, Mr Shridath S. Ramphal Q.C., delivered on September 7 1986, are reproduced here by kind permission of the Commonwealth Secretariat.

For a Secretary-General, however, there is no salvation by fleeing the eye of the storm, nor would he find it if he did. He must, in all weathers, be true to the Commonwealth and articulate the concerns of the Commonwealth community in its broadest sense as these concerns reach him. The Commonwealth will always be stronger for his doing so; and, of course, in the end it is the Commonwealth itself that sweeps clean the threshold of human dignity on issue after issue. In whatever garb, therefore, I come to you - as a Jamaican lawyer, as West Indian citizen or as Commonwealth "janitor", I welcome you with pride to the Eighth Commonwealth Law Conference.

The Caribbean is rightly renowned for the dynamic qualities of its cricketers. Many of you who are visiting this region for the first time will, indeed, know those cricketers better than you know your Caribbean legal colleagues. As you get to know them over this next week, however, do not be surprised to find in the West Indian lawyers the same rich variety of talent that you associate with their cricketing colleagues. The agility of Learie Constantine, the penetration of Michael Holding, the strength of Clive Lloyd, the guile of Sonny Ramadhin, the vigour of Viv Richards, the dash of Garfield Sobers, the elegance of Frank Worrell, will all be arrayed before you here in Ocho Rios in forensic form.

And also like West Indian cricketers, West Indian lawyers are among the most mobile legal profession in the world. We think nothing here of practising in numerous jurisdictions concurrently; even sitting as judges in some, while being practitioners in others. The Caribbean Sea which over the centuries has been a dividing, not a uniting, sea has failed signally to keep West Indian lawyers apart. Indeed, the law and the legal profession in the West Indies must rank with cricket and rum and calypso as among our great unifying influences - and no West Indian lawyer worth his salt (or his "sauce") will be ashamed of that company.

You may find it confusing that I use the terms "West Indian" and "West Indies" and speak occasionally of the Caribbean; but do not be confused - and do not try too hard to understand. The truth is we are a West Indian nation in and around the Caribbean Sea - which is in part my way of paying tribute to a great Jamaican, Sir John Mordecai, who served that nation's cause with great devotion, and has just passed from us.

I am particularly glad that this gathering of Commonwealth lawyers follows so quickly after the Commonwealth's recent Heads of Government meeting in London on the situation in South Africa. That meeting was preceded by an almost frenetic build-up of foreboding. It was not all contrived by the media; some of it was justified by the postures and policy positions of Commonwealth leaders. There were real dangers that the fabric of the Common-

wealth association, woven and strengthened over many years of vigorous but always sensitive debate and accommodation, could be damaged. It was not; it was strengthened.

It was strengthened because, at the end of the day, the overwhelming voice of the Commonwealth spoke out in a manner which made the Commonwealth credible not only in its member countries but in the world community; a voice which reached beyond a solitary division within the Commonwealth to a wider unity within the world community. The Commonwealth today stands taller because of it. Years from now, at Commonwealth gatherings, other generations will look back upon that moment as one at which the Commonwealth faced a crucial test and passed it with distinction.

It is no small matter that Canada and the Caribbean, India and Australia, Zambia and Zimbabwe could be so much of one mind, could be so confident in their resolve, so sure of the moral and political imperatives involved, as to stand shoulder to shoulder before the world.

It is no minor achievement that they should continue to work, as they have done this past month, to encourage that world to join in what will surely be in history's eyes one of the epic struggles for freedom in the end years of this century.

Many are contributing to that struggle and in many different ways. But, as Commonwealth lawyers gathered here in Jamaica, I believe we should reserve a special moment of reflection for those who make their contribution to justice in South Africa by ekeing out of that country's legal system every slender chance that is allowed. Ironically, it is the apartheid regime's obsession with its own righteousness as a bastion of "civilisation" in Southern Africa that presents even these meagre opportunities. Pretoria understands at one level that a civilised society lives by the rule of law and so, while laws that are anathema to any civilised society continue to be enacted, the regime feels obliged to resort to its system of courts, a compulsive urge to legitimise its perversions to itself. This fixation with legal process through which apartheid South Africa hopes to persuade the world of its purity offers the occasional chance to advance justice.

Today, as a pernicious emergency descends ever more steeply into martial law, courageous members of the legal profession of all races - black, brown and white, judges and practitioners, barristers and solicitors, academic lawyers and young law school undergraduates are making significant personal contributions. I do not mean to imply that the entire legal profession in South Africa is converted to the antiapartheid cause; but I do salute those among them who labour in that cause with such unswerving dedication. They should know that we remember them as Commonwealth lawyers gather here. One day, when South Africa is free, when its people

can talk with assurance of "justice at home", those lawyers, I hope, will be among you - as South Africa returns to its place in a Commonwealth that will itself have helped to advance that moment.

In doing so, the Commonwealth is at its very best. Where else can leaders of all races and religions, of rich countries and poor, aligned and non-aligned, work together thus: amplifying by their unity the heartbeats of millions of people throughout their continents. It is a great encouragement to the world when this happens; for it does not happen very often. While we continue to work in the Commonwealth for even greater unity, we need to understand how much we have achieved and that that success is also a matter of great satisfaction in the world beyond the Commonwealth. Just recently the West German President, Dr. Richard Von Weizsacker, on a state visit to Britain, said this about the Commonwealth: "The Commonwealth is not against anyone, it is a source of common sense in a world where that quality is sadly lacking. It cannot negotiate on behalf of the world but it can caution the world and help it to negotiate. The more the Commonwealth preserves its coherence across the oceans and continents, the better for all including my own country."

I began by saying that I am glad that the Commonwealth lawyers are meeting so soon after these events, because a gathering such as this is the very embodiment of the sturdiness of the Commonwealth connection. Before the Commonwealth, was the common law; its golden thread runs through the Commonwealth fabric. You discourse with each other out of a common inheritance; one, it is true, shared by others in the wider English-speaking world and even beyond it, but with special intimacy within the Commonwealth. That shared legacy of law and legal systems is one of the Commonwealth's great assets.

In the same month as the London Heads of Government Meeting, Commonwealth Law Ministers met in Zimbabwe - Zimbabwe that had itself been helped to freedom by another act of Commonwealth resolve, defying the petulant quibbles of special interest lobbies and even more unworthy instincts. It was a notable meeting in Harare - one which the Law Ministers themselves rank as one of the most productive ever held. It saw the Commonwealth breaking new legal ground, moving away from rigidities of nineteenth century concepts of sovereignty concepts which stood like medieval buttresses in the path of legal progress preventing the extension of extra-territorial assistance in criminal matters.

Together, Commonwealth Law Ministers have taken positive steps towards establishing a regime which, while respecting the essentials of sovereignty on the one hand, nevertheless equips law enforcement agencies, prosecutors and the courts to provide a more adequate response to the challenges posed by increasingly mobile and international offenders. By providing for the international forfeiture of the profits of crime, they have taken practical steps

towards securing an international regime equipped to strip criminals of the proceeds of their crime - be they drug runners or fraudulent financiers - and notwithstanding that the profits may have been stashed away in other countries. In so acting, Law Ministers have given a lead to international efforts to attack the drug problem in particular - by rendering it less profitable - and have set an example which the rest of the world should - and surely must - follow.

I wish we could do so much, also, in respect of international terrorism - which makes innocent people random targets of calculated murder. The Commonwealth has spoken out against international terrorism. We must find the means of acting together as well; not by imitating it, but by ridding the world of this menace.

I mention this scheme for mutual assistance in criminal matters just agreed by our Law Ministers as an example of that substantive dimension of Commonwealth co-operation which does not make the headlines. It does not make the headlines because it is agreement, not discord; but it is reality. The Commonwealth has to deliver at many levels. There are roles for politicians, and roles for politician lawyers; but there are roles as well for lawyers pure and simple. Your agenda provides an opportunity for you to continue the traditions of these Law Conferences in pushing on the frontiers of legal development. My first Commonwealth Law Conference was fully 21 years ago, in Sydney in 1965. I was a young Attorney-General and it was for me an exciting and fulfilling experience. The Legal Division of Commonwealth Secretariat owes its existence to that meeting. Your consideration today of some of the matters on your agenda will also bear fruit in years to come. International crime and the law; law development and economic inter-dependence; the family as the basic unit of social order; the legislative process today; the way to justice in commercial relations; the law in international commerce; each a lively topic lending itself to differing perspectives in all the rich variety of your several situations and experience.

But over and above them all is the theme of this Conference: "Justice at Home and Abroad". Nothing is more important than that this theme should infuse all your deliberations. It is a theme of profound relevance to our times; justice within our national jurisdictions, but justice as well in the wider world that is also our home. As I approached your theme and searched for the depth of its meaning, I thought I saw just below the surface: "the rule of law at national and international levels". But I looked more closely and there was more to see, more even than the rule of law, for tyranny itself can take the form of the rule of unjust laws.

Justice goes beyond that frontier. It is about the quality of law and its administration. "Justice at Home and Abroad" must be about the quality of life the law ordains and sanctifies within countries and within our global society. That is the clear light

of justice, and it must be our guiding star. The law itself may be flawed; from time to time everywhere it will be; but so long as lawyers worship at the altar of "justice" there is hope for social redemption. It is when as lawyers we become ritual votaries of the legal order that justice is endangered and we ourselves cease to be worthy of society's esteem. Your theme, therefore, is as much about lawyers as about the law. As such, when you consider that in the setting of this Conference it is a theme that addresses the lawyers who serve a thousand million people - a fourth part of the world - it is a theme of significance indeed.

I particularly hope that, as you pursue that theme, you will not content yourselves with "Justice at Home". When I spoke to you at Hong Kong (with the aid of the big screen and the wizardry of modern telecommunications) I urged that the Commonwealth lawyers must not be among the last to recognise that planet earth had become a human neighbourhood, and that the duty of care we owe to our neighbour now imposes new imperatives within our closely knit interdependent world; that in that new global village we had to put ourselves not only on a bus in Clapham but in the paddy fields of Asia, in the scorched grasslands of Africa, in the urban slums of industrialised and developing countries alike. I asked that we provide conceptual space for the needs of a new jurisprudence.

In the three years since your gathering in Hong Kong those needs have grown, but our human society is still a long way from responding adequately to them. Indeed, in some respects we show signs of retrogression. For the poor, the weak, the small, the non-conformist, those who stand against dominion from whatever quarter, who resist spheres of influence (any sphere) - to them all, there seems little "justice abroad" in the society of nations.

Where is there justice abroad with a world economic system which over three decades of development has ensured that the gap between rich and poor has widened? Where is there justice abroad for poor countries hounded by insatiable interest rates demanding their pound of national flesh, when the IMF acts out the dual role of Shylock and the Judge? Where is there justice abroad when in a world of butter mountains and lakes of milk, millions are always hungry and many die for want of food? Where is there justice abroad for the world's oppressed when the moral imperative of compelling an end to inhumanity yields to the mores of the counting house or even baser instincts, and power aligns itself to tyranny? Lawyers, common lawyers in particular, are not exempt from concern with this ascendancy of injustice within our human habitat.

Four days ago at Harvard Prince Charles used words to academics generally which have a special relevance to lawyers when he said: "Never has it been more important to recognise the imbalance that has seeped into our lives and deprived us of a sense of mea-

ning because the emphasis has been too one-sided and has concentrated on the development of the intellect to the detriment of the spirit."

You simply cannot avoid a response - however tempting it may be to pull down the professional shutters on injustice beyond national jurisdictions. It is no longer possible to shut it out. We are less than fourteen years from the end of this century. Historians will assess it in many different ways; but one way, I am sure, will be as the century of major human effort to establish the basic elements of a just and ordered world society. Lawyers played a great part in that effort - common lawyers among them, from several of your countries. The first halting steps to the League of Nations; the surer ones to save succeeding generations from the scourge of war that led to the United Nations in 1945, and twenty-five years at least of building up a framework of international co-operation for peace, security and human development.

International law and International Court of Justice to administer and enforce it were central pillars of the architecture of world order in the post-war era. Today, the edifice is threatened; lawyers must be among the first to recognise the dangers.

We cannot be blind to the present drift away from multilateralism with the United Nations system virtually under siege: attacks on international institutions designed not to refurbish, but to diminish, them. We cannot fail to see increasing assertion of crude power - in the political, the economic and the military domain. The modest measure of world order we have achieved since 1945 is eroding, and with it, the rule of law world-wide.

As we meet here on Jamaica's North Coast we cannot but be mindful of a concerted effort by powerful countries to subvert the United Nations Convention on the Law of the Sea. It is a treaty signed on the shores of Montego Bay, so close to where we are now; a high point of international effort to establish a legal regime over what is the common heritage of all mankind. And how can we ignore the undisguised campaign to diminish the stature of the International Court of Justice - the very symbol of "justice abroad"? That the most powerful member country of the English speaking world - of the common law world if not of the Commonwealth - is in the vanguard of many of these retrogressions poses a special challenge to the Commonwealth a challenge to dissuade an "in law" from debasing a shared tradition and disavowing the noble enterprise of giving the frontiers of justice a global reach. Even though the writ of justice does not run world-wide, we must begin to perceive the outlines of a global jurisdiction in our interdependent world.

What interdependence means in this wider context is that we need each other in some measures: for prosperity, for subsistence, for survival even. The rich may be able to prosper in a world from

which the poor had vanished; the poor may be less poor in a world without the very rich; the West may be able to dwell in harmony (though history denies it) if from the East there came neither torment nor threat; the East, the centrally-planned economies, may be able to enjoy even a Procrustean bed (though reality refutes it) if capitalism was not there to provoke envy. But the simple truth is that these are wholly irrelevant scenarios, for neither rich nor poor, East nor West, has the option to go it alone. For better or worse all must share this planet, acknowledging our mutual needs and that in their fulfillment lies a mutual interest.

I am not talking, of course, about world government; the world is not ready for that, and perhaps it never will be; but that we have to acknowledge our inseparable humanity and the integrated global community we have become there can be not the least doubt. And that with such acknowledgement must come the means by which we manage an interdependent world, if only in the interest of mutual survival, is a proposition we surely know in our hearts to be true. We must now find in our minds the way to respond to it.

If we are serious about "Justice at Home and Abroad", lawyers must be involved, and be seen to be involved, with these contemporary issues of national and international society. We simply cannot opt out, making a sterile professionalism a masquerade for inertia. If coming to Ocho Rios, coming to Jamaica, coming to the Caribbean, helps even a little in thus reinforcing us in the true and active service of the common law in its widest reach towards our common humanity, it will have been the best of all journeys - one that leads to renewal of commitment and resolve in a context of enlarged horizons.