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Acceptance Speech
of
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It is indeed a great honour and privilege to be here in this historic Gardens of Cecilio Rodriquez in the Retiro Park of Madrid to accept the 2002 'Justice in the World' award from the Justice in the World Foundation under the auspices of the International Association of Judges (IAJ).

In recalling the history of the IAJ I realize that this is the 50th golden jubilee year since its foundation. This therefore is memorable for me and my wife to be present with all of you this evening.

The vision of His Honour Ernesto Battaglini, the then President of the Italian Association of Judges, expressed at a Congress of some European and foreign judges in Venice on October 13, 1952 for the formation of an international association of judges was realized in Salzburg on September 6 1953 where the Statute and Constitution of the IAJ were approved. Thus the IAJ was officially formed with six member associations from Austria, Brazil, France, Germany, Italy and Luxumberg. Quite appropriately and fittingly the visionary, Ernesto Battaglini, was elected the first President. It has since grown and today it has 63 national associations of judges in five continents. A formidable achievement considering that not all nations have such national associations.

The main objective of the IAJ is "to safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom". The essence of this objective was echoed in paragraph 27 of the Vienna Declaration and Programme of Action exactly 40 years later.

While judges should no doubt be conscious and be concerned over the independence of their judicial authority yet often it is difficult for judges to be seen publicly defending the same independence when it is attacked by extraneous forces be it the executive or legislative arms of the government or others. Such conduct by proactive and courageous judges have sometimes placed them under risk accused as being political and subjected to disciplinary actions. I know of one case where the head of the judiciary was removed for such conduct when he publicly defended the judiciary amidst public attacks from the executive.

Judges therefore need other voices to come in defense of their independence. The ideal would be public opinion. As Shimon Shetreet said in his classic work on "Judges on Trial" "Written law if not supported by the community and constitutional practice, can be changed to meet political needs, or can be flagrantly disregarded. On the other hand, no executive or legislature can interfere with judicial independence contrary to popular opinion, can survive".[1]

However, public opinion of the judiciary and in particular of judicial independence is often blurred, manipulated or contrived by the power of the media particularly in countries where the media is controlled by the political and commercial elites. This is often compounded by the very little understanding the public have of the mysteries of the legal procedures leave alone the significance of the independence of the judiciary. This ignorance is partly the fault of the judiciary for not being more transparent over its role in a democracy. In some countries cumbersome legal procedures leading to delays in the dispensation of justice have further compounded to the low public perception of the role of the judiciary. To these disenchanted people justice delayed is justice denied.

[1] Judges on Trial by Shimon Shetreet pg. 392

Another voice in defense of judicial independence could be the legal profession and other non-governmental organizations interested in the administration of justice.

The latter half of the last century saw an increase in the attacks on the independence of judges and lawyers worldwide. International organizations of jurists committed to the rule of law began to collect and prepared annually data on the number of these attacks which varied in their severity. The threats and attacks emanated just not from the executive arm of governments but from criminals and powerful businessmen and groups. Securing an independent justice system and protecting independent judges and lawyers became a topic of high priority on the agenda of these organizations. They devised various programmes to address the issues. There is today a large volume of materials resulting from these programmes.

Information gathered through these programmes resulted in these organizations formulating general international standards for securing and maintaining judicial independence. But these standards did not have the support and backing of an intergovernmental organization. Governments generally were not receptive. Focus of attention was then on the United Nations.

At the United Nations level the issues were debated at the Sub-Commission on Prevention of Discrimination and Protection of Minorities way back in 1978. The Sub-Commission called upon the Secretary General to prepare a preliminary study and report to the same Commission. In 1980 the Secretary General entrusted Dr. L.M. Singhvi, a prominent advocate of India, with the preparation of a report on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. Dr. Singhvi submitted his final report to the Sub-Commission in 1985 with a draft declaration on the independence of justice which came to be known as the Singhvi Draft Declaration on the Independence of Justice.

In the meantime the U.N. Congress on the Prevention of Crime and Treatment of Offenders at its 7th Congress in Milan in 1985 adopted the Basic Principles on the Independence of the Judiciary which was endorsed by the U.N. General Assembly in the same

year. In this regard the IAJ played an important role in Milan. In 1989 the U.N. General Assembly endorsed a set of Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary.

At the 8th U.N. Congress on the Prevention of Crime and the Treatment of Offenders in Havana in 1990 the U.N. Basic Principles on the Role of Lawyers was adopted and endorsed by the General Assembly in the same year. The same Congress also adopted a set of standards for prosecutors known as the Guidelines on the Role of Prosecutors.

Hence, today there are three United Nations approved instruments on standards for the independence of judges, lawyers and prosecutors and one instrument namely the Singhvi Declaration unendorsed. It must be stressed that the principles enumerated in these instruments are general and very basic. General though they are they represent the first intergovernmental standards spelling out the minimum standards and are today the acknowledged yardstick by which the international community measures the independence of judges and the roles of lawyers and prosecutors.

The adoption of the Basic Principles on the Independence of the Judiciary in 1985 was a compromise bargain with the Eastern European States, the then communist bloc, which vehemently rejected the original text. Rather than not having any standards at all, the original text was considerably diluted. Now that the iron curtain has fallen there may be compelling reasons for a review of this instrument.

Having set the basic standards the next consideration was one of implementation. The U.N. Sub-Commission in 1989 appointed Mr. Louis Joinet, a former judge of France, to prepare a working paper on the means of monitoring implementation of the standards. Mr. Joinet submitted several reports to the Sub-Commission over a period of four years and in his final report recommended the creation of a monitoring mechanism. In 1993 the Sub-Commission following this recommendation called for the creation of 'a monitoring mechanism to follow-up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officers and the nature of problems liable to

attack this independence and impartiality.' In 1994 the Commission on Human Rights endorsed this recommendation and thereupon requested the Chairman of the Commission to appoint a special rapporteur with a mandate which I described as four pronged -investigatory, advisory, legislative and promotional. It is thematic.

Last year by Commission resolution 2002/37 on the integrity of the judicial system, the Commission requested the Special Rapporteur, in addition to his original mandate, to also monitor breaches of guarantees of fair trial procedures before independent and impartial courts trying criminal cases.

What then is the role of the Special Rapporteur? He carries out investigations of specific complaints on attacks on independence of judges and lawyers. Such investigations are done through correspondence and where appropriate a mission to the country is undertaken to do an ***in-situ*** investigation. The investigations are more in the nature of information gathering to ascertain the causes for the attacks and study the scenario prevailing in the country concerned. In his investigations he is assisted not only by the government concerned but also by the NGOs, Bar Associations and judges in the country. A report is then prepared and presented to the Commission.

Urgent communications are sent out to governments immediately upon receipt of any information of attacks or threats on independence of judges or lawyers. In the communications governments are called upon to verify the truth of the information and if true to explain. Where the personal security of judges and lawyers is at risk governments are called upon to protect them.

The Special Rapporteur also takes note of positive developments in countries to improve judicial independence and reports his findings to the Commission. On the advisory aspects the Special Rapporteur is mandated to advise and recommend to the country concerned on structuring the judicial system to dispense independent justice. With so many new countries in transition today this is a challenging role for the Special Rapporteur. On standards the Special Rapporteur can review the present international standards and advise on its adequacy

and recommend changes to meet with global changing needs.

The mandate of the Special Rapporteur is to investigate into attacks on independence of judges and lawyers. Not all matters relating to all judges and all lawyers. However, experience has shown that there are some judges and lawyers who by their own conduct bring disrepute to their institutions thereby even threatening the very independence of their office and the institutions. Such judges and lawyers would be exposed with recommendations for their removal.

Allegations of judicial corruption are quite common. These, if proved, are gross and heinous judicial misbehaviour which should not be tolerated in civil society. The corridors of courts must be kept clean and unpolluted so that what flows from the fountain of justice would remain pure.

In the last nine years I had intervened in more than 100 countries and had undertaken in-situ missions in several countries of the regions. All my reports have been presented to the Commission and many can be accessed from the UN High Commissioner's website (www.unhchr.ch).

As will be seen from my reports threats to judicial independence which began in the latter half of the last century continued and still continuous. Even the developed nations are not spared. Judicial independence remains fragile. It should not be taken for granted. It is the presence of an independent judiciary which distinguishes a democracy from a totalitarian State. Hence we must continue to be vigilant.

In the last four years I have also expressed my concerns over the need for greater judicial accountability in the light of increased number of complaints of judicial misconduct, particularly judicial corruption and the need for proper mechanisms to investigate and address these shortcomings.

While the executive arm is often apprehensive of judicial independence the judicial arm

is often apprehensive of judicial accountability. I have in my reports observed that judicial accountability is not inimical to judicial independence. Though judicial accountability is not the same as accountability of the executive or legislative branches of the government yet judicial accountability without impinging on judicial independence will enhance respect for judicial integrity. The UN Basic Principles do not provide for judicial accountability save for provision on procedure for judicial discipline.

Over the last three years in association with the Judicial Group on Strengthening Judicial Integrity and collaboration with the Consultative Council of European Judges of the Council of Europe and the American Bar Association and Central and European Law Initiative (ABA/CEELI) we deliberated in the drafting of the Bangalore Principles of Judicial Conduct. The drafting was finalized and adopted in November last year at the Hague.

At the last session of the Commission in April this year I presented these Principles for its consideration. There was unanimous support for these Principles from member States. In a resolution the Commission noted these Principles and called upon member States, the relevant UN organs, intergovernmental organizations and non-governmental organisations to take them into consideration.

In my report I observed that these principles would go some way when adopted and applied in member States to supporting the integrity of judicial systems and could be used to complement the United Nations Basic Principles on the Independence of the Judiciary to secure greater accountability. The Bangalore Principles are now available in the six United Nations official languages.

Let me conclude with the recent concerns I have expressed over how the measures taken by some governments, particularly the developed ones, to combat terrorism could impact on the independence of the judiciary.

The judiciary plays a crucial role in times of crisis, as this is when the rule of law is most threatened. One of the basic roles of the judiciary is to uphold the law and to protect basic

human rights as enshrined in domestic and international law which also accords with the main objective of the IAJ. It is easier to have respect for the independence of the judiciary where there is not a perceived threat to the life of the nation. However, it is in crisis situations where the independence of the judiciary is most important, in order to prevent oppression from the state. As was eloquently stated by Kessler J in a recent decision in United States District Court for the District of Colombia,

> "Difficult times such as these have always tested our fidelity to the core democratic values of openness, government accountability, and the rule of law. The Court fully understands and appreciates that the first priority of the executive branch in a time of crisis is to ensure the physical security of its citizens. By the same token, the first priority of the judicial branch must be to ensure that our Government always operates within the statutory and constitutional constraints which distinguish a democracy from a dictatorship."[2]

The courts must be permitted to fulfill their role in determining whether such measures, some of which maybe draconian, are necessary, proportional and therefore in accordance with international law. The judiciary is the key to finding the right balance. Denying this represents a significant threat to human rights and the rule of law. The challenge is convincing governments to take, not necessarily the easier approach, but the more effective and responsible one in the long term. It has surprised me how quickly some governments have turned their faces from legality, proportionality and the rule of law.

At the last Commission session in my oral statement I emphasized that the war on terrorism cannot be won by denial of rights to those arrested and detained on mere suspicion of terrorism. It was on this premise that in a press statement earlier on March 12, 2003 I expressed my grave concerns on the implication of the decision of the Court of Appeals for the District of Columbia Circuit delivered on March 11, 2003 regarding the denial of due process to the detainees at Guatanamo Bay. Detentions without trial before an independent court offend the first principle of the rule of law.

I was never a judge. But in the last nine years I was mandated to monitor the independence of judges and lawyers worldwide. In the course I was able to meet the actors in the entire spectrum of the administration of justice including government leaders and ministers in many parts of the world. It gave me the insights to the problems faced by judges, prosecutors and lawyers in the discharge of their professional duties. It also gave me the insights to judicial misconduct. Though Special Rapporteurs are not paid for their work the nine years was a rich and invaluable experience which no money could buy.

Even though I am not a judge yet you as the association of world judges have bestowed on me this prestigious award which I accept with all humility and moreover solemnly in memory of all those judges and lawyers worldwide who paid the price of persecution. Their only offence was that they discharged their professional duties independently and courageously without fear or favour. It was their sacrifice which aroused the conscience of the United Nations Commission on Human Rights in 1994 to monitor judicial independence worldwide. I was privileged to be appointed its first monitor.

I once again thank you.

[2] Kessler J, Center for National Security Studies, et al. v United States Department of Justice at 3-4. 2 August 2002. Taken from the website of the Center for National Security Studies, http://cnss.gwu.edu/~cnss/kesslerdecision.pdf.