

SEMINAR ON THE PROTECTION OF JOURNALISTS IN CONFLICT

Tuesday 24 March 1986, Sydney

"THE NEED FOR RED CROSS INITIATIVES"

SUMMARY OF SPEECH BY JUSTICE KIRBY

SUBJECT: JOURNALISTS NEED MORE PROTECTIONS IN WAR ZONES,  
SAYS KIRBY  
JUDGE CALLS FOR RED CROSS INITIATIVES

EMBARGO: TUESDAY, 24 MARCH, 1986 6.00 P.M.

SYDNEY, TUESDAY

Justice Michael Kirby today urged a "fresh start" to efforts to provide legal protections to journalists covering armed conflicts. He was speaking at a seminar on the protection of journalists in conflict held at Red Cross House, Sydney. The seminar was organised by the Australian Red Cross Society in conjunction with the International Press Institute and the Australian Journalist's Association.

Justice Kirby was formerly Chairman of the Australian Law Reform Commission and is a Commissioner of the International Commission of Jurists in Geneva.

Amongst points made by Justice Kirby were:

- \* There is a continuing toll in death and imprisonment of journalists covering armed conflicts, at least 20 killed each year. Many more are wounded, gaoled or expelled.
- \* International legal protections for journalists are inadequate. Earlier efforts to secure an international convention in the United Nations have foundered on controversies concerning the definition of "journalists", licensing of journalists, their identification and the legitimate bounds of their function.

- \* Some international legal protections have been devised for war correspondents and journalists on missions. However, the development of international law remains for the future.
- \* Some journalists bring risks upon themselves.
- \* It is probably inevitable that, until wars are outlawed, covering them in the media will be a risky business - and excessive regulation brings its own risks.

#### History of war correspondents

Justice Kirby said that the history of journalist coverage of armed conflicts demonstrated the dangers of too detailed legal regulations and the advantages, but risks, of independent action. He mentioned:

- \* The coverage of the charge of the Light Brigade in 1854 by the first war correspondent of the Times - Howard Russell. This was very embarrassing to the British Government when received.
- \* The wide spread coverage of the Civil War in the United States leading to the suggestion by Union General Irwin McDowell that journalists should wear a white uniform "to indicate the purity of their character".
- \* During the First World War French and German military authorities had banded journalists from the front. The British had made them officers and war correspondents. But the consequence was frequently inadequate or uncritical review of military efforts and failure adequately to cover the attrition of the Somme.

- \* In the Second World War 39 journalists were killed carrying out professional duties. Three were killed in Korea. Forty five were killed and 18 missing in the Vietnam War.

Justice Kirby said that a number of Australian journalists had fallen whilst covering armed conflicts for the Australian media. He mentioned:

- \* The death of journalist Michael Birch, killed during a battle in Vietnam in 1968.
- \* The death of 5 television journalists in October 1975 (3 Australian and 2 British), all of them under 30 in East Timor whilst covering the attack by Indonesian Government forces on the Nationalist Fretilan guerrillas.
- \* The death of ABC journalist Tony Joyce in November, 1979 whilst covering the Rhodesia conflict. He had been shot not in the combat zone but immediately after being arrested after Zambian Police.
- \* The death of other Australian journalists including one killed during the abortive coup in Bangkok last year.

Justice Kirby said that in addition to the journalists, Australian and otherwise, killed in the course of performing their professional duties, figures show the rising toll in journalists imprisoned, expelled and otherwise disadvantaged because of journalistic activities. He gave the following figures:

- \* The Amnesty International Report for 1977 records that there were 104 journalists imprisoned or "reported missing" in 25 countries on Amnesty's records.
- \* Other reports by Sean MacBride of Ireland indicate that in 15 months between 1976 and 1978, 24 journalists were assassinated and 57 wounded, tortured and kidnapped in various countries of the world.
- \* The riskiest places for journalists were certain countries of South America and of South East Asia. There have also been cases of assassination, torture and expulsion of journalists in Uganda and South Africa.
- \* Because of the strict control of the media in eastern countries, reports of the predicament of journalists there were sketchy. But many reports were received of punishment of human rights activists for distributing broad sheets and other rudimentary media publications.

Justice Kirby said that apart from momentary grief and sympathy when news of the death of journalists was received, little was done. He said that the international legal system provided inadequate protections for journalists. Although other personnel such as medical, religious and civil defence authorities had secured special status, the special protections for journalists were few.

International legal protection

Justice Kirby said that the first efforts to provide protection for civilian population in time of armed conflict could be traced to the Hague Conventions of 1899 and 1907. However, neither of these was specific to journalists. In 1929 Article 81 of the Geneva Convention including "newspaper correspondents" in the category of persons entitled to be protected as prisoners of war.

In 1948 the Universal Declaration of Human Rights emphasised the human rights for freedom of opinion and expression and to "seek, receive and impart information and ideas through any media and regardless of frontiers". (Article 19).

But Justice Kirby said that "human rights" tended to be the victims in times of armed conflict. This had been recognised by various efforts designed to secure better and special protection for journalists in times of conflict. He mentioned:

- \* The third Geneva Red Cross Convention of 1949 which affirmed that "war correspondents" should be entitled to the status of a prisoner of war (Third Convention, Article 4, A(4)).
- \* In 1970 France suggested the development of a United Nations convention for the protection of journalists. This led to a direction to the UN Human Rights Commission to draft a convention.
- \* In 1972 the UN General Assembly noted texts prepared by the International Committee of the Red Cross on this topic.

\* In 1977 two Protocols, additional to the Geneva Conventions, were adopted by the ICRC. One of these was a special provision in Protocol 1 (relating to international armed conflicts) namely Article 79 on "measures for protection of journalists". The Article:

- \*\* Affirms the right of a journalist engaged in a professional mission in areas of armed conflict to all of the protections granted by international humanitarian law to civilians.
- \*\* Continues the special status for "war correspondents" associated with armed forces as provided by the 1949 Convention.
- \*\* Provides a model identity card for international use by journalists, as a means of proof of identity as a journalist, not as a prerequisite.

Justice Kirby said that the weaknesses in the present international legal protections for journalists were:

- \* They had limited application, particularly they apply only to international armed conflict. The additional protection of 1977 (Article 79) was not extended to Protocol II concerning non international conflicts.
- \* In terms, the protection exists only for the period of detention. It does not extend eg once the journalist is handed over to civil authorities or others following apprehension.

- \* Protection is expressed in terms that the journalist is "considered" a civilian; whereas, if properly performing his profession, he is in fact and not just notionally, a civilian.
- \* The protections of the 1949 Convention are limited to accredited war correspondents; whereas most Australian journalists covering armed conflict are independent of the armed services.
- \* The Conventions are devoid of effective sanctions for their breach, as indicated by the numerous reported cases of death and imprisonment of journalists (including some Australians)

Journalists imperil themselves

Justice Kirby said that in many cases journalists brought disaster on themselves by deliberate misconduct or naive and inexperienced action in conflict zones. He instanced:

- \* The partisan attitude of many journalists in some previous conflicts, such as the journalists who covered and often participated in the Spanish Civil War on the republican side.
- \* The habit of some journalists, including many Americans who covered the Vietnam War, to carry arms, thereby making distinctions between armed forces difficult or impossible.
- \* The reckless action of journalists getting into the line of fire, in a naive belief that they were somehow protected by their mission.

- \* Foolhardy and premature entry of journalists into dangerous areas at the heart of conflicts carrying objects (television cameras) which, from a distance might appear to be weapons.

Problems for developing international law

Justice Kirby said that a number of problems had to be acknowledged as standing in the way of developing effective international law on the protection of journalists. He mentioned:

- \* The conflicting views in different countries concerning the proper role of journalists and of the media and conflicting perceptions of the function of the media particularly in eastern and Third world countries.
- \* The high importance attached by the combatants to winning and their typical lesser interest in the accuracy of coverage or even desire to control the coverage of events that are embarrassing, prejudicial or detrimental to their armed efforts.
- \* The inability of any law totally to remove the risks to persons entering armed conflict zones.
- \* The inevitable suspicion of military authorities that journalists will misuse their position to provide information vital to the enemy - a facility made much easier today by the technology of instantaneous communications.
- \* Doubts and conflicts concerning the procedures involved in identity cards and the risk that issue and withdrawal of cards to journalists will be misused as a mechanism of control of journalistic independence.

- \* The inevitable demand of some journalists for independence and risk taking, in the name of a "good story" which puts them into positions of danger. Any law designed to prevent or protect journalists in such situations might be introduced at the price of diminishing vigorous reporting and healthy criticism of military incompetence.

#### Future developments

Justice Kirby said that the efforts to develop international protections for journalists had "bogged down" in the United Nations over the same controversies as had held up the development of the so called "new world information order" in UNESCO. This was the complaint of Third World countries concerning the orientation and emphasis of Western media services. Justice Kirby said that it appeared more likely to him that effective protections for journalists would develop not in the United Nations bodies in the first instance but in the international committee of the Red Cross. With its emphasis on neutrality, this body stressed concern with the humanitarian aspect of protecting human beings. It did not concern itself with the politics of the conflict.

Justice Kirby said that a "round table" discussion had taken place in Geneva in mid 1985 under the auspices of the ICRC. Amongst proposals suggested were:

- \* A hot line on a 24 hour basis for journalists, their organisations and relatives for the pursuit of wounded or injured or missing journalists.

- \* The ICRC to act as a clearing house for collection of data on hazards facing journalists in armed conflicts.
- \* Emphasis on journalists as civilians.
- \* Preparation by the ICRC of a manual on safety for journalists.
- \* Distribution to journalists of a "guide for survival on dangerous missions".
- \* Better preparation of journalists for dangerous missions.
- \* More regional seminars to alert journalists to the dangers, to rudimentary protections in international law and for the need for care.
- \* Possible development of arm band or other recognised insignia for journalists, to reduce the risks of accidental injury.
- \* Further development of international humanitarian law to extend protections from international to national and domestic situations covered by the media.
- \* Reopening the debate for a convention, in the United Nations.

Balance between risk and independence

Justice Kirby said that there was a balance to be struck between the proper protection of journalists and the assurance of their independence from government and military authorities:

"The deaths of Australian and other journalists, the hijacking of the French television team in Lebanon and the lamentable statistics from Amnesty International show that

Journalism is a risky business in a dangerous world. Clearly more protections are needed. But I should prefer such protections to be development, at least in the first instance, under the auspices of the International Committee of the Red Cross. Here, the emphasis is likely to be on the protection of the journalist as a human being. When the emphasis shifts to the media role of the journalist, complex questions of politics intervene. If we add journalists to the medical, religious and other persons already protected, do we run the risk of confusion at the battle front? Are these protections irrelevant, in any case, in the age of nuclear weapons? Have journalists undermined the capacity of open western societies to fight wars which can still be fought in closed societies which control the media? Is the price of journalists protection the licensing and regulation of those who are journalists? Is this too high a price to pay? Must it just be acknowledged that journalism, like war, is a dangerous business, having a few inevitable victims? I believe we could do better - especially the formulation of international law, the adoption of elementary precautions by journalists who go to war and the development of internationally recognised credentials. But beyond that, the licensing of journalists must be approached with caution. For he who may be licensed, may be delicensed or, in a myriad of subtle ways, may be controlled and manipulated. The inadequate reporting of the attrition of the Somme by the journalists, subsequently knighted, who were attached to the British military, teach the lesson that journalists, like judges, must vigilantly guard their independence or their debase their profession.", Justice Kirby concluded.

NOTE ON SPEECH

The above speech will be delivered at Red Cross House, 3rd floor, 159 Clarence Street, Sydney on Tuesday, 25 March, 1986 at 4.30 p.m. It is part of a round table "protection of journalists in conflict". This begins at 3.00 p.m. and concludes at 6.00 p.m. Other speakers include Tom Farrell, Chairman, Australian Section, IPI, Pat Burgess, journalists and John Lawrence, Federal President, AJA. Justice Kirby is President of the NSW Court of Appeal but he is speaking in his capacity as a Commissioner of the International Commission of Jurists. For contact with Paul Wylie, Director, Australian Red Cross Society telephone (02) 290 2622. For contact with Justice Kirby's office telephone (02) 230 8202.