

LAW NEWS

(SHORTER VERSION)

Triennial meeting of the International Commission of Jurists  
Caracas, Venezuela, January 1989

LAW COUNCIL OF AUSTRALIA

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Readers of Law News will remember recent items on the state of the Malaysian Judiciary. Concern has been voiced in many legal circles in Australia about the circumstances surrounding the removal from office of the Lord President of Malaysia - that country's highest judge - and two other Supreme Court judges. In Law News, December 1988, 28 the letter of the Malaysian Prime Minister to Lawasia was published defending the Government's stand.

This subject was in the forefront of a meeting held in Caracas, Venezuela in January 1989. The triennial meeting of the Commissioners of the International Commission of Jurists took place. Among the twenty Commissioners attending the Caracas meeting was Justice Michael Kirby (President of the NSW Court of Appeal). In the course of the meeting, Justice Kirby was elected to the Executive Committee of the ICJ. He is the first Australian to hold office on the Executive. Also present in Caracas was Mr John Dowd MP (Attorney General of New South Wales). Mr Dowd is the long time president of the Australian Section of the ICJ, in which office he succeeded Justice D L Mahoney and Mr E G Whitlam QC.

The Caracas meeting of the ICJ Commissioners coincided

with a conference in Caracas on the independence of judges and lawyers which was held under the auspices of the United Nations.

The opening session of the conference included an address by Justice P N Bhagwati, former Chief Justice of India. Justice Bhagwati examined the pressures on, and obstacles to, the independence of the judiciary. He analysed the provisions in the Indian Constitution concerning the appointment of Judges, together with the conventions which are followed in relation to their appointment.

Justice Bhagwati referred to recent cases where judges had been dismissed as "victims of executive wrath". He mentioned particularly Justice Mahomed Hussein of the Supreme Court of Bangladesh and Tun Salleh Abas, the former Lord President of Malaysia.

The conference was later addressed on the position of the Malaysian judiciary by Tun Salleh and also by Mr Param Kumaraswamy, past-president of the Bar Association of Malaysia. Tun Salleh outlined the importance of ensuring the integrity of any tribunal which is established to consider the removal from office of a judge. Mr Kumaraswamy explained the initiatives which had been taken by practising members of the legal profession both in Singapore and Malaysia to confront attacks on the independence of the judiciary and the legal profession coming principally from the Executive Government. He mentioned, in particular, the great sensitivity of governments to judicial vigilance in cases of

alleged abuses of internal security laws. Mr. Kumaraswamy described several cases in Singapore and Malaysia. He referred to the strong support which the independent Bar of Malaysia had given to the deposed Lord President and other Judges. He said that the Bar Council of Malaysia ends all correspondence with the words "Return the Independence of our Judiciary". It had urged lawyers to do likewise in support of the removed judges and in opposition to the way in which they were removed from office. The Caracas conference later adopted unanimously a resolution proposed by Justice Kirby condemning the circumstances leading to the removal from office of the Lord President and other Judges of the Supreme Court of Malaysia.

The focus of attention in the first two days of the Caracas meeting was upon measures which had been adopted in a number of jurisdictions to secure compliance with the Basic Principles on the Independence of the Judiciary. The Basic Principles arise out of a draft earlier prepared under the auspices of the International Commission of Jurists. They were formulated at meetings held in Sicily in 1982 and Montréal in 1983. One of the leading actors in the Montréal Conference was Justice Jules Deschênes, former Chief Justice of Quebec. Justice Deschênes addressed the Caracas meeting on the need for refinement and improvement in the Basic Principles.

The representative of the Secretary-General of the United Nations paid tribute to the contribution of the ICJ to

the development of the UN Principles. He also acknowledged the work of the Centre for the Independence of Judges and Lawyers (CIJL) established in Geneva by the ICJ. The Director of the Centre, Mr Reed Brodie, outlined the work of the Centre (CIJL) in providing an international focus to promote the idea of the independence of judges and lawyers throughout the world. He outlined the investigations conducted by CIJL during 1987-8, and its interventions in a number of cases, including the removal of judges in Malaysia; the assassination and intimidation of human rights lawyers in the Philippines; the gaoling of defence lawyers in Singapore; threats against a judge in Chile as a result of his investigations into allegations of torture; the arrest of defence lawyers in Fiji and the prosecution of a judge in Peru for granting a habeas corpus petition during a state of emergency. In matters of this kind, the CIJL calls abuses to world notice, mobilises local support for judicial independence and provides intellectual and tangible support for the important idea of judicial independence.

During succeeding days, the Caracas conference turned to the consideration of the position of judges during states of emergency and violent changes of government. After a number of papers on the position of judicial independence in Africa and the Caribbean, the meeting turned to and adopted the "Caracas Plan of Action". This urged governments to take all efforts to ensure the adoption of Basic Principles on the role of lawyers and to comply with the Basic Principles on

the Independence of the Judiciary. The ICJ was invited to conduct national studies on the extent of compliance with and departures from the Basic Principles. Various practical means by which the ICJ could assist, by educational and advisory services, in promoting the independence of the judiciary and of the legal profession were proposed.

The conference then turned to a discussion of the role of National Sections of the ICJ. The Australian Section was represented at this session by Mr John Dowd. Views were expressed concerning the desirability of improved contact between the national sections. The Secretary-General of the ICJ (Mr Niall MacDermot QC) reported on the thirty-two national sections of the ICJ and the thirty-two affiliated organisations. Mr MacDermot recorded the leading part played by the ICJ in the coming into force of the African Charter of Human and Peoples' Rights, the European Convention on Torture, the reform of Japanese mental health law (following a report on that topic) and the adoption of the Basic Principles on the Independence of the Judiciary. These were listed as the principal achievements of the ICJ since its last meeting.

The resolution on the Malaysian judiciary expressed "grave concern" on the part of the ICJ about the removal from office of the former Lord President (Tun Salleh Abas) and two other judges of the Supreme Court of Malaysia (Tan Sri Wan Suleiman and Datuk George Siah) as well as the suspension from office of those and other judges of that Court. The

resolution singled out for particular mention the concern of the ICJ about the campaign of attacks on the judiciary by the Prime Minister of Malaysia; the inducement made to the Lord President to resign; the apparently biased constitution of the tribunal set up to enquire into the Lord President's removal; the inclusion in the tribunal, as its chairman, of the Judge who succeeded to the Lord President's office; the unprecedented action of that Judge in securing the removal and suspension of Supreme court judges who had provided a stay to allow the constitutionality of the tribunal to be tested in the Malaysian Supreme Court; and the "unpersuasive" report of the tribunal following which the Lord President was removed. The Secretary-General of the ICJ was instructed to bring the concerns of the ICJ to the attention of authorities in Malaysia including the judiciary, the former judges, the Bar Association of Malaysia and beyond.