

Executive Committee Update,
International Commission of Jurists,

Madrid, 17 January 1994.

001082

3.1 **THIS UPDATE** - This is the third Update in a series which began on 1 November 1992. It is intended as an informal summary of some of the main points which were discussed at the meeting of the Executive Committee (EXCO) of the International Commission of Jurists (ICJ) in Madrid on Monday 17 January 1994. It does not replace the minutes of the EXCO. But it will give Members of the Commission, Sections, Affiliated Organisations and others an advance idea of the matters under consideration. Its purpose is to increase knowledge and understanding of the work of EXCO.

3.2 **ATTENDANCE** - The President (Professor Ruiz-Gimenez) was present and he was thanked for the hospitality of the Spanish Section of the ICJ in the arrangements for the EXCO meeting and the seminar on Independence of the Judiciary and the Media which was to follow. Others attending were Judge L Groll (Sweden) (Vice President); Justice M D Kirby (Australia) (Chairman of EXCO); Professor Dalmo Dallari (Brazil); Mr Desmond Fernando (Sri Lanka); Ms Asma Khader (Jordan); Mr Kofi Kumado (Ghana); Mr Fali Nariman (India) and Professor C Tomuschat (Germany). The Secretary General (Mr Adama Dieng) and the Director of CIJL (Ms Mona Rishmawi) also attended.

3.3 **MINUTES** - The minutes of the last meeting of EXCO in May 1993 were approved, with the addition of a reference amongst the list of future issues for the ICJ's programme of a separate item. (See EXCO Update #2 para 2.22)

"(d) children's rights".

3.4 **OBITUARIES** - The Secretary General (SG) drew attention to the death of the following Members or former Members of the ICJ:

Justice T S Fernando (Sri Lanka); and

Professor Torkel Opsahl (Norway).

The deaths of the foregoing and of the following distinguished judge and member of the Canadian Section of the ICJ were noted with regret:

Justice Walter Tarnopolsky (Canada).

- 3.5 **HUMAN RIGHTS PRIZE** - The SG reported upon the award to the ICJ of the United Nations Human Rights Prize and its presentation to the SG by the Secretary General of the United Nations and former Member of the ICJ (Dr Boutros Boutros-Ghali).
- 3.6 **SPECIAL REPRESENTATIVES (UN)** - EXCO noted the appointment of the Chairman (Justice Kirby) on 23 November 1993 as Special Representative of the Secretary General on Human Rights for Cambodia. It also noted that others associated with the ICJ held or had held like posts. Professor Tomuschat had just completed his appointment as Special Representative (Guatemala). The Senior Legal Officer for Latin American (Mr Alejandro Artucio) was continuing his work as Special Rapporteur.
- 3.7 **VIENNA WORKSHOP** - The SG reported on the ICJ Workshop on the International Penal Court and on the Human Rights of Women held in conjunction with the Second World Conference on Human Rights held in Vienna in June 1993. Some concern was concerned about the lesser participation in the session on the human rights of women. Satisfaction was expressed in relation to the session on the penal court. Professor Tomuschat referred to the progress in the work of the International Law Commission on the proposal for an International Penal Court. It was noted that Commission Member Professor Antonio Cassese (Italy) had been appointed President of the International Tribunal on the former States of Yugoslavia. Satisfaction was expressed arising out of the Vienna meeting concerning:
- (1) The heightened international interest in the human rights of women; and
 - (2) The adoption of the proposal for a special High Commissioner on Human Rights.
- 3.8 **AFRICAN HUMAN RIGHTS COURT** - The SG referred to the upcoming meeting to be convened by the ICJ in Geneva in the following week on the proposal to enlarge the machinery for the enforcement of the *African Charter of Human and Peoples' Rights*. The ICJ would be drafting a proposal for an African Human Rights Court, such as existed in relation to the European and Inter-American Conventions. It was hoped to place the ICJ's protocol before the meeting of the African Heads of Government being held in June 1994. The hope was that the ICJ and OAU would sign a proposed protocol.
- 3.9 **EASTERN & CENTRAL EUROPEAN INITIATIVES** - The Chairman expressed concern that the ICJ was not taking sufficient initiatives in Central and Eastern Europe and in the successor states of the USSR. The SG referred to the proposed conference on land rights which were relevant to returnees in these countries (as well as to indigenous peoples). Some mention was made of

the initiatives of ICJ, in conjunction with CSCE, in Moldova and past initiatives of the ICJ in Russia. The role of the proposed legal officer for Europe was mentioned. The possibility of a special staff position for Eastern Europe was explored. Judge Groll pointed out that the European Sections would be meeting in Budapest later in 1994. Mr Fernando mentioned the effort of UBA to initiate independent Bar Associations in the region. The need for care in this regard was stressed by Mr Kumado. It was suggested that the ICJ could do well, at least in the short run, in participating actively in developments in the former Baltic States of the USSR, Estonia, Latvia and Lithuania.

3.10 **PUBLICATIONS** - The SG reported the publication of *Attacks on Justice* in the French language for the first time. The publication was very well received and contributed to the proposal (which the ICJ supported) to secure the appointment of a Special Rapporteur on the Independence of the Judiciary. As to other publications mention was made about:

(a) The appointment of a qualified Press & Publications Officer (Mr N Bovay); and

(b) Publication of a special issue of the *Review* as a reflection on the Second World Conference on Human Rights in Vienna in 1993. A like special issue had been published in 1968 following the First Conference in Teheran in 1968. The Chairman referred to Justice Patel's (Pakistan) excellent intervention in Vienna and is to provide copy of this.

3.11 **DEMOCRACY RIOTS THAILAND - DELAYED REPORTS** - The SG reported that the delay in the provision of the report by Dato' Param Cumaraswamy (Malaysia) on the Mission to Thailand and the happening of later events made it probably unsuitable to publish findings at this time. There was discussion of the ways of ensuring prompt provision of reports of ICJ missions. One possibility suggested was the provision of at least two days following a mission, during which members could discuss their views, write out and agree upon their recommendations and complete their reports - or at least agree on the structure of the report and settle the writing timetable. The utility and timeliness of the Mission to Thailand was not doubted. The developments since the Mission had tended to further the cause of human rights in that country. Members welcomed the election of Param Cumaraswamy as President of Lawasia.

3.12 **PENDING REPORTS** - EXCO received reports on the pending mission reports on the following, amongst others:

(a) **Kashmir** - It was noted that the first draft was complete

- (b) **Comfort Women (Japan)** - Further review on applicable international law was required.
- (c) **Occupied Territories - Civil Justice System** - It was noted that a first draft was completed but would require much work. It was reported that the Mission had called on former ICJ Commissioner Justice Haim Cohen (Israel). The good cooperation of the Israeli authorities was noted.
- (d) **Gabon** - The participation in the observance of the first multi-party election in 25 years was noted.

3.13 **SOUTH AFRICA** - EXCO discussed the coming elections in the Republic of South Africa (July 1994). It noted the report *Voting for Peace* and the invitation to the SG to take a leading coordinating role in the UN presence during the electoral process. The SG explained the difficulty of accepting such a post, given his duties to the ICJ. He tabled a letter from the former EXCO Chairman (Mr W Butler, United States) reporting a proposed mission of AICJ to South Africa. EXCO agreed that Mr Butler should be invited personally to represent the ICJ in South Africa during the electoral process. The mission of the American Section should go ahead as planned. It was suggested that the SG should discuss with AICJ the desirability of including in the Mission, United States participant(s) who were of African American ethnicity. The need for an ICJ Mission was left to the SG to determine.

3.14 **MISSION GENERALLY** - The foregoing discussions led the EXCO to review arrangements for ICJ Missions generally. It was agreed that the Chairman of EXCO would prepare a report on the conduct of ICJ Missions in consultation with the CIJL Director. The report would deal with:

- (a) **Composition**
- (b) **Methodology**
- (c) **Follow up** - The conduct of workshops or seminars in the country subject to investigation. It was emphasised that reports should go beyond library utility and that the ICJ, by follow up, should strive to ensure that its recommendations were carried into effect.

It was noted that the SG is preparing a paper on electoral observance.

3.15 **ASIAN/PACIFIC HUMAN RIGHTS CONVENTION** - It was noted that the proposal for such a Convention were in the ICJ's forward programme. The Chairman indicated that he had urged in Australia an initiative by those countries of the region which were parties to the First Optional Protocol to the ICCPR. Mr Fernando urged close cooperation with Lawasia and IBA. It was resolved to ask Dato' Param Cumaraswamy (Malaysia) to prepare a paper on possible ways forward. It was noted that Dato' Param Cumaraswamy was

presently President of Lawasia and this would afford a special opportunity (together with Mr Fernando's role in IBA) to cooperate in a fresh ICJ initiative to establish a regional human rights system in Asia and the Pacific.

3.16 **MEDIA RELEASES** - EXCO noted the media release which had been prepared in relation to the uprising in Mexico on the part of the indigenous people. EXCO emphasised the importance of:

- (a) the vetting of all media releases by SG, the Director of CIJL or other senior ICJ officer;
- (b) the checking of such documents by persons whose mother tongue was French or English or Spanish etc; and
- (c) the despatch of such releases to EXCO Members and interested Members of the Commission.

3.17 **FINANCIAL REPORT & BUDGET** - EXCO noted and approved the Financial Report and Budget. It noted that the ICJ had spent 93% of the 1993 budget allocated sum. The saving derived from delay in hiring staff and a reduction of costs (including by saving through arrangements made for French language translations).

The EXCO discussed in this connection

- (a) **Staff matters** - The need expressed by SG for an Executive Secretary and the possibility that the Director of CIJL could fulfil this role in part at least;
- (b) **Fund raising** - The need for the setting up of an Endowment Fund;
- (c) **The Ford Foundation** - The need for a further follow up in the relations with the Ford Foundation. It was agreed that the Chairman would write to the Chairman of the Foundation. The possibility of discussions with the Foundation's review team at the next meeting of EXCO was approved; and
- (d) **European officer** - Judge Groll stressed the importance of securing an early appointment of the European Officer. It would be a great advantage to have an officer with a facility in the Russian language.

3.18 **MEETING OF COMMISSION** - EXCO discussed the venue and possible theme for a conference in association with the next meeting of the Full Commission in January 1995. Various possibilities were mooted:

- (a) **Venue**
 - (i) India - possibly Bangalore or Delhi
 - (ii) Hong Kong
 - (iii) Geneva - Cartigny (France).
- (b) **Conference Theme**
 - (i) 50th Anniversary of the UN
 - (ii) Land rights
 - (iii) Indigenous peoples' rights

- (iv) Religious and Political Fundamentalism
- (v) Future of Hong Kong
- (vi) Women's rights
- (vii) Self Determination
- (viii) Women and the Judiciary
- (ix) Rights of the Family
- (x) Land mines

EXCO confirmed that the meeting would take place in January 1995. It left to the SG, in consultation with the Chairman of the EXCO, to determine the venue and topic of the theme of any associated conference. It was agreed that the Commissioners would be informed as quickly as possible about the decisions made by the SG. In his decision the SG would take into account the considerations of cost; funding support for and interest in various conference themes; the worldwide mission of the ICJ and securing maximum attendance of Commission members, Sections and Affiliated Organisations.

3.19 **FUTURE MISSIONS** - EXCO discussed possible future missions as follows:

- (a) **Tibet** - SG is to renew requests to the Ambassador for the Peoples Republic of China to secure a visa for entry of a Mission. If not, a Mission would be organised to visit Tibetan refugees and to meet the Government in Exile;
- (b) **USA - Racial Discrimination** - SG is to consider a request for a Mission put forward by Professor J Ebersole. The Mission would review the alleged discrimination in capital crimes and punishment against African Americans and review the situation in the United States in the light of *McCleskey v Kemp* 481 US 279 (1987) (USSC). The sending of a Mission was approved in principle. It was stressed that it should be at a high level. The American Section and Affiliated Organisations in the United States are to be informed; and
- (c) **Swaziland** - The request for a Mission into the independence of the judiciary in Swaziland was noted and a Mission approved. The SG is to contact Mr W Butler (past Chairman of the EXCO) to represent the ICJ in this Mission;
- (d) **Ghana**
- (e) **Sri Lanka** - It was noted that Sir William Goodhart had been denied a visa.

3.20 **HONG KONG** - EXCO discussed the report of the Mission to Hong Kong *Countdown to 1997* and its follow up. Mention was made of the proposal for a Human Rights Monitor. There was a general feeling that the initiative should

come from Hong Kong itself and the United Kingdom. The ICJ should support the proposal in principle. The Chairman revealed that he would be meeting the Governor of Hong Kong (Rt Hon Chris Patten) in February 1994. The SG is to consult the new Commissioner from Hong Kong, Gladys Li QC. Funding for the Human Rights Monitor would be explored.

3.21 **COMMISSION MEMBERS** - EXCO considered nominations for election to the Commission from Hungary, the Republic of South Africa, the Kingdom of Thailand and the United States of America. Nominees from Hungary and Thailand were approved, subject to the SG checking and ascertaining that the nominees were willing to serve. The nominations from South Africa were stood over. Those from the United States were stood over to the next meeting to permit further enquiries to be made concerning the specific activities of the candidates in matters relevant to the Mission of the ICJ. The need to raise the profile of the ICJ in the United States of America was emphasised. The members of EXCO noted the urgency of filling vacancies in the Commission membership (32 positions out of 45 filled). The SG was requested to present a comprehensive proposal at the next EXCO meeting taking into account Commission resolutions concerning balance in matters such as profession, sex, age, geographical distribution etc.

3.23 **CANADIAN SECTION** - EXCO considered the SG's recent visit to Canada. It examined problems relating to the funding of his visit and the numbers of the members of the Section. The Chairman is to write to the President of CICJ.

3.24 **NEW SECTIONS** - Consideration was given to applications to the ICJ for recognition as Sections:

- (a) **Ecuador** - The application for approval was accepted; and
- (b) **Latvia** - The application for approval was postponed to permit further enquiries relating to the independence of the candidate body from the government.

EXCO resolved to thank the Spanish Section for its hospitality in Madrid during the EXCO meeting and the Seminar.

3.25 **HISTORY OF ICJ** - The President referred to the need for an authoritative history of the ICJ. The SG reported on the work being done by a scholar in the United States. He said that this history, to which various Commissioners and officers, past and present, had contributed, should be finished mid-1994.

3.26 **VICE PRESIDENT** - The SG tabled a letter from the Zimbabwe Government mission in Geneva concerning the Vice President, the Hon Justice Enoch Dumbutshena (Zimbabwe). EXCO concluded that "official position" in the Statute of the ICJ involved an "official position" in government or in an

international agency - such as had concerned President M Robinson (Ireland), Mr R Dossou (Benin), Hon A Wako (Kenya) and Mr B Boutros Ghali (Egypt). It had not been regarded as affecting judicial office, national or international. It thus did not affect the Vice President's involvement, outside government, in a political movement. The SG was authorised to respond accordingly.

3.27 **TRIAL OBSERVERS** - Mr Fernando urged rationalisation of IBA and ICJ trial observers. He suggested that in many cases IBA would be willing to leave selection of observers on behalf of IBA to be chosen by the ICJ (by nomination of the Chairman and SG). He suggested that this issue be discussed further. He agreed to prepare a paper for the next EXCO meeting.

3.28 **OTHER TOPICS** - EXCO then turned to consider other topics including:

- (a) the international regulation of land (anti-personnel) mines;
- (b) the rights of the family - in the International Year of the Family - including definition of "family";
- (c) a special rapporteur on the independence of the judiciary; and
- (d) making ICJ "sexy" - the Chairman referred to the Australian/Asian tour of Brian Adams, the popular musician and his public outspoken support of Amnesty. He suggested that ICJ give consideration to stimulating popular imagination and encouraging more active national sections.

3.30 **STAFF** - The feasibility and desirability of payment of a bonus to members of the staff was considered, having regard to:

- (a) the recent cost of living adjustments in Geneva;
- (b) the payments to equivalent staff by other bodies;
- (c) the hard work of the staff in the year past; and
- (c) the surplus over budget, reported earlier.

It was resolved to leave any payment up to a specified point to the Secretary General in consultation with the Chairman. The SG is to report on this action to the members of EXCO and is to do so at the latest at the next EXCO meeting.

3.31 **NEXT MEETING** - It was resolved to hold the next meeting of the ICJ EXCO on Saturday 8 October 1994. The venue is to be determined by the SG after consultation with the Chairman and may be fixed as Hong Kong if suitable arrangements and funding can be secured.

3.32 **ANNEXURES** - Note the annexed revised draft agenda of the EXCO setting out the matters upon which the SG reported including ICJ/CIJL meetings; publications; missions; UN and inter-governmental meetings; NGO meetings; press releases; alerts and other interventions.

Annex: Agenda January 1994 EXCO.