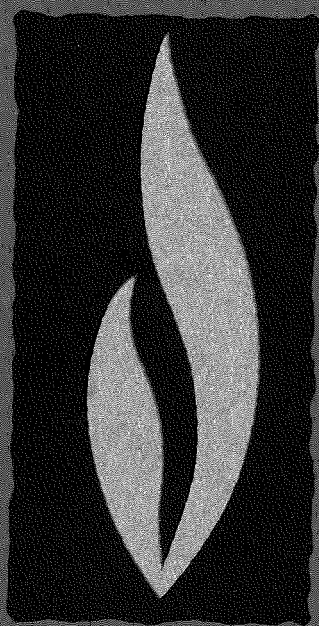




International Commission of Jurists



Report on Activities 1992 - 1994



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* as of 31 December 1994

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Adama Dieng

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CIJL Director	Mona Rishmawi

* as of 31 December 1994



The ICJ Family

ICJ/CIJL International Secretariat Staff^{*}

Secretary-General	Adama Dieng
Legal Officers	Philip Amoah (Africa) Alejandro Artucio (Latin America and the Caribbean) Dilbur Parakh (Asia and the Pacific) Mona Rishmawi (Middle East-North Africa and CIJL Director) Peter Wilborn (CIJL Assistant Legal Officer)
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Executive Officer (Finance and Administration)	Trevor Davies
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Secretaries	Malin Mabrouk Edith Pellas Margarita Rosenthal Karin Stasius

^{*} in 1994

Preface

The International Commission of Jurists (ICJ) is a remarkable body. It is one of the oldest and most respected of the global human rights organizations. Because of its history, its mission and its membership (comprising mostly leading judges, practising lawyers, legal academics and paralegals), it is a body which has always attached the greatest importance to acting in a principled and responsible way. It adheres to the objectives of its Statute. These have committed it to the defence of the Rule of Law, safeguarding human rights and upholding the independence of judges and lawyers in all parts of the world. The Centre for the Independence of Judges and Lawyers (CIJL) is an invaluable body, established by the ICJ and working closely with it. It has been so effective that its identification of the *Attacks on Justice*, listed in the annual report by that name, undoubtedly played a significant part in the acceptance by the United Nations Commission on Human Rights of the proposal to appoint a Special Rapporteur on the Independence of Judges and Lawyers during the period under report. It was no surprise when a member of the ICJ (Dato' Param Cumaraswamy, Malaysia) was appointed to fill this important office.

This *Triennial Report* records the extraordinary scope of the activities pursued by the dedicated officers of the ICJ under the leadership of the Secretary-General, Mr. Adama Dieng. For a body with such a small budget and modest staff complement, the range, depth, novelty and importance of the activities of the ICJ are truly astonishing. When the ICJ intervenes in the councils of the United Nations, in the countless missions, seminars, trial observances and the other activities recorded in these pages, it is listened to. It has earned this attention by the integrity and responsibility shown by the Secretary-General and his distinguished predecessors and by its staff, supported by Commission Members who comprise some of the most notable judges and lawyers in the world.

Yet no organization can afford to stand still complacently. The ICJ is not given to self-congratulation. Indeed, it is in the midst of an important time of change. During the triennium under report, the

Executive Committee has pursued a vigorous policy of institutional renewal:

- Regular *Updates* have been circulated to all members of the Commission of the ICJ, Sections and Affiliated Organizations, in order to improve the transparency of the organization and to provide a more open administration;
- New, modern premises with updated information technology have been secured in Geneva in place of the overcrowded and inefficient premises occupied in years past;
- Active cooperation with the Ford Foundation's external review of the ICJ was given and received in an open-minded endeavour to benefit from the process of external scrutiny;
- Intensive attention has been given to the role of Commissioners within the organization and to the guidelines which should govern missions of the ICJ to assure the maximum utilisation of the high attributes of participating members;
- The identification of future human rights issues has, once again, showed the ICJ to be at the cutting edge of international thinking on such matters. Amongst the issues adopted for future attention by the ICJ are: human rights of women and of children; human rights and drug use and drug dependence; human rights and sexual orientation; disability, including HIV/AIDS; technology and human rights, including the implications of the Human Genome Project for human rights;
- The choice of the conference theme of the Triennial Conference in Bangalore in October 1995 - the role of lawyers in the implementation of the *International Covenant on Economic, Social and Cultural Rights* - once again demonstrates the leadership role of the ICJ in matters vital to its mission;

- The ICJ's proposal for the establishment of an International Criminal Court continues to gather momentum. The establishment of special tribunals for war crimes in the case of the former Yugoslavia and in Rwanda heralds the coming establishment of an International Criminal Court of general jurisdiction. The shocking evidence emanating from the former Yugoslavia and Rwanda, and from many other places, cries out for the effective establishment of the Rule of Law internationally. Again, it is a matter of pride to the ICJ that one of its Members (Professor A. Cassese, Italy) has been elected as the first President of the International Criminal Tribunal for the former Yugoslavia from which it is hoped that an institution of general remit will shortly come.

The ICJ faces the challenges of the coming new millennium with confidence and renewed energy and commitment. This *Triennial Report* shows what can be done by a body of jurists dedicated to the Rule of Law. Despite some setbacks, the global portents for the Rule of Law are full of hope. The ICJ will be there playing a most constructive role in the future, as it has in the past. Its best days lie ahead.

*The Hon. Justice Michael Kirby AC CMG
Chairman of the Executive Committee*



The Hon. Justice Michael Kirby AC CMG, Chairman of the Executive Committee of the ICJ talks to the Dalai Lama, spiritual leader of the Tibetan people in May 1992.

An Organizational Profile

The International Commission of Jurists (ICJ) was founded in Berlin in 1952. It is a non-governmental organization devoted to promoting the understanding and observance of the Rule of Law and the legal promotion and protection of human rights all over the world. The ICJ has consultative status with the United Nations Economic and Social Council (ECOSOC), the Council of Europe, and the Organization of African Unity. To help carry out its work, the ICJ has a network of 78 national sections and affiliated organizations.

The ICJ created the Centre for the Independence of Judges and Lawyers (CIJL) in 1978 with a mandate to promote and protect the independence of the judiciary and the legal profession throughout the world. The ICJ and the CIJL are both based in Geneva, Switzerland, and share the same headquarters.

A. The Commission

The directive authority vests in the Commission which meets at least once every three years. The Commission elects the President and one or several Vice-Presidents from amongst its Members for a renewable three year term. Hierarchically, the President is the organization's highest authority.

The Commission is the organ that defines the current policy and future orientations of the ICJ. Its decisions are taken by a simple majority. The Commission is composed of reputed jurists who are dedicated to the aims and objectives of the ICJ and who in their persons provide wide geographic representation of the legal profession as well as the different legal traditions around the world. New Members are elected to the Commission by a majority vote of the Commission upon sponsorship by two Members and subsequent recommendation by a majority of the Commission's Executive Committee. Members are elected for a term of five years and are

eligible for re-election for two further periods of five years. Former Members of the Commission are eligible for election as Honorary Members. Membership in the Commission is limited by Statute to a maximum of 45 persons. On 31 December 1994, the Commission comprised 36 Members.

B. The Executive Committee

When the Commission is not in session, it is the Executive Committee that defines the general policy of the Commission and its programmes of activities and is responsible for the administrative supervision of the International Secretariat.

The Executive Committee meets at least twice a year. It is the effective executive organ of the ICJ with power to appoint the Secretary-General. Members of the Commission can be elected to the Executive Committee by their peers. Membership of the Executive Committee is limited to a maximum of seven persons serving three-year renewable terms. The Executive Committee has the power and authority to take decisions when the Commission is not in session. The Executive Committee is headed by a Chairman who is appointed from amongst the ranks of the Committee. Decisions of the Committee are taken by a majority vote of all its Members.

C. The International Secretariat

The Secretary-General is appointed by the Executive Committee and heads the International Secretariat. His task is to ensure the practical implementation of the aims and objectives decided by the Commission. In charge of the daily conduct of the affairs of the Commission, the Secretary-General is responsible for the employment of personnel of the International Secretariat in Geneva. The Secretary-General is entitled to attend all the meetings of the Executive Committee.

The International Secretariat currently comprises of: an Executive Secretary; five regional Legal Officers (in charge of

conducting activities in Africa; the Americas and the Caribbean; Asia and the Pacific; Europe; and the Middle East and North Africa); a Press and Publications Officer; an Executive Officer (Finance and Administration); a Finance Officer; a Programme Coordinator; an Assistant Programme Coordinator; an Assistant to the Secretary-General; a Librarian; three Secretaries; and a Computer specialist.

The Centre for the Independence of Judges and Lawyers is composed of a Director, an Assistant Legal Officer, and an Administrative Assistant.

D. National Sections and Affiliated Organizations

There are currently 78 National Sections and Affiliated Organizations attached to the ICJ. Such groups form the basis of the ICJ world-wide network. These entities are legally independent from the ICJ though they conduct similar activities in their own countries. They enable the Commission to maintain contacts with the legal profession at the local level and supply the International Secretariat with material on legal developments in various countries. The ICJ enhances the development of such groups by training their staff and taking up issues on their behalf at the international level.

Triennium Opens with 40th Anniversary and Commission Meeting

For the ICJ, 1992 was an auspicious year - in which it not only held its triennial Commission meeting but also celebrated 40 years of existence, making it one of the world's oldest international human rights NGOs.

The 40th anniversary provided a stimulus for participants at the triennial meeting to take stock of the ICJ's accomplishments over the previous four decades and to reach out towards the future to chart a path that would allow the organization to make the greatest possible contribution towards the goal it set itself at its inception in West Berlin in 1952* - the promotion and protection of the Rule of Law (later, more precisely defined as "promoting throughout the world the understanding and observance of the Rule of Law and the legal protection of human rights").

Among more than 70 participants at the meeting, which was held in Cartigny (close to ICJ headquarters in Geneva) from 21 to 23 January, were two former secretaries-general, both of whom were leading players in the history of the organization - Norman Marsh (1956 to 1958) and Niall MacDermot (1970 to 1990).

On the morning of 21 January, prior to the start of the meeting, a special opening ceremony was held in the *Palais des Nations*. It was attended by more than 200 people and presided over by the acting Chairman of the Executive Committee, Justice Michael Kirby (Australia). The then-ousted President of Haiti, Jean-Bertrand

* One of the founding members of the ICJ, Walter Linse, an East German lawyer, was kidnapped on 7 July 1952, just a few days prior to the inauguration of the new organization, and subsequently "disappeared." Professor Christian Tomuschat, a member of the ICJ Executive Committee, has obtained certain information on the Linse case from the German government archives (Mr. Linse was handed over to the Soviets by the East Germans, sentenced to 25 years in prison and died in 1953) and has requested that the case be reopened.

Aristide, was to have given the key-note speech, but was unable to attend the meeting as originally planned and the speech was read by Haiti's ambassador to Canada, Emmanuel Ambroise.

Among other messages sent were those of the then President of the ICJ, Andr s Aguilar Mawdsley (Venezuela), the UN Secretary-General (and former ICJ Commission Member) Boutros Boutros-Ghali and the UN Deputy Secretary-General for Human Rights and Director of the UN in Geneva, Jan Martenson.

Speeches were given by ICJ Vice-President Joaquim Ruiz-Gimenez (Spain), Bernard Ziegler, President of the State Council of Geneva and Michael Van Walt, Secretary-General of the Unrepresented Nations and Peoples' Organization and Special Legal Advisor to His Holiness the Dalai Lama. Many speakers, while referring to recent democratic advances round the world, nevertheless underlined the need for new attitudes and new outreach from veteran democracies. As underlined by Mr. Ziegler "if the advanced economy nations who are legitimately proud of their democratic institutions really desire universal rights, they contribute less by giving lessons to poorer States than they would by accepting the establishment of a more just global order."

The triennial meeting proper began on the afternoon of 21 January also under the chairmanship of Justice Kirby. Secretary-General Adama Dieng gave a comprehensive account of ICJ activities since the previous triennial meeting to the Commission Members and Honorary Members and members of national sections and affiliates who had gathered in Cartigny from all over the world. Remarking on the rapid changes taking place globally, Mr. Dieng stressed that "as walls which keep people in are replaced by walls that keep people out, as the rivalry between East and West is replaced by conflict between North and South, the role of the ICJ becomes even more vital."

In considering the future role of the organization, the Commissioners discussed, in depth, the draft plan of action prepared by the Secretariat. They considered that particular attention should be paid, *inter alia*, to standard-setting; enforcement of human rights norms; training (of judges, lawyers, the military and the police) in human rights standards and their implementation; and research and

studies (in areas such as legal education and impunity). They noted that it was important that the ICJ establish a proper balance between intellectualism and activism.

A considerable part of the meeting was devoted to national sections and affiliates and focused on strengthening their participation, improving the ICJ's communication with them and increasing the interaction among them. Mr. Dieng welcomed eight new national sections and affiliates - from Hong Kong, Poland, Switzerland, Hungary, Japan, Burkina Faso, the United States, and Togo - into the ICJ structure.

The new officers elected during the meeting were:

- | | |
|----------------------|--|
| President: | Dr Joaquim Ruiz-Gimenez (Spain) |
| Vice-Presidents: | Justice Enoch Dumbutshena (Zimbabwe) |
| | Justice Lennart Groll (Sweden) |
| | Justice Claire l'Heureux-Dubé (Canada) |
| | Mrs Tai-Young Lee (Republic of Korea) |
| Executive Committee: | Justice Michael Kirby (Australia) |
| | Dr Kofi Kumado (Ghana) |
| | Mr Fali S. Nariman (India) |
| | Prof. Dalmo de Abreu Dallari (Brazil) |
| | Mr Desmond Fernando (Sri Lanka) |
| | Prof. Christian Tomuschat (Germany) |
| | Ms Asma Khader (Jordan) |

ICJ Awarded UN Human Rights Prize

The end of 1993 brought international recognition of the ICJ's endeavours in the human rights field, with the award to the organization of the United Nations Human Rights Prize. Secretary-General Adama Dieng accepted the prize, on behalf of the ICJ, at a special ceremony in New York on 10 December 1993 (appropriately enough on International Human Rights Day). The plaque was presented by the UN Secretary-General Mr. Boutros Boutros-Ghali who, himself, had been an ICJ Commission Member for eight years (from 1973 to 1981).

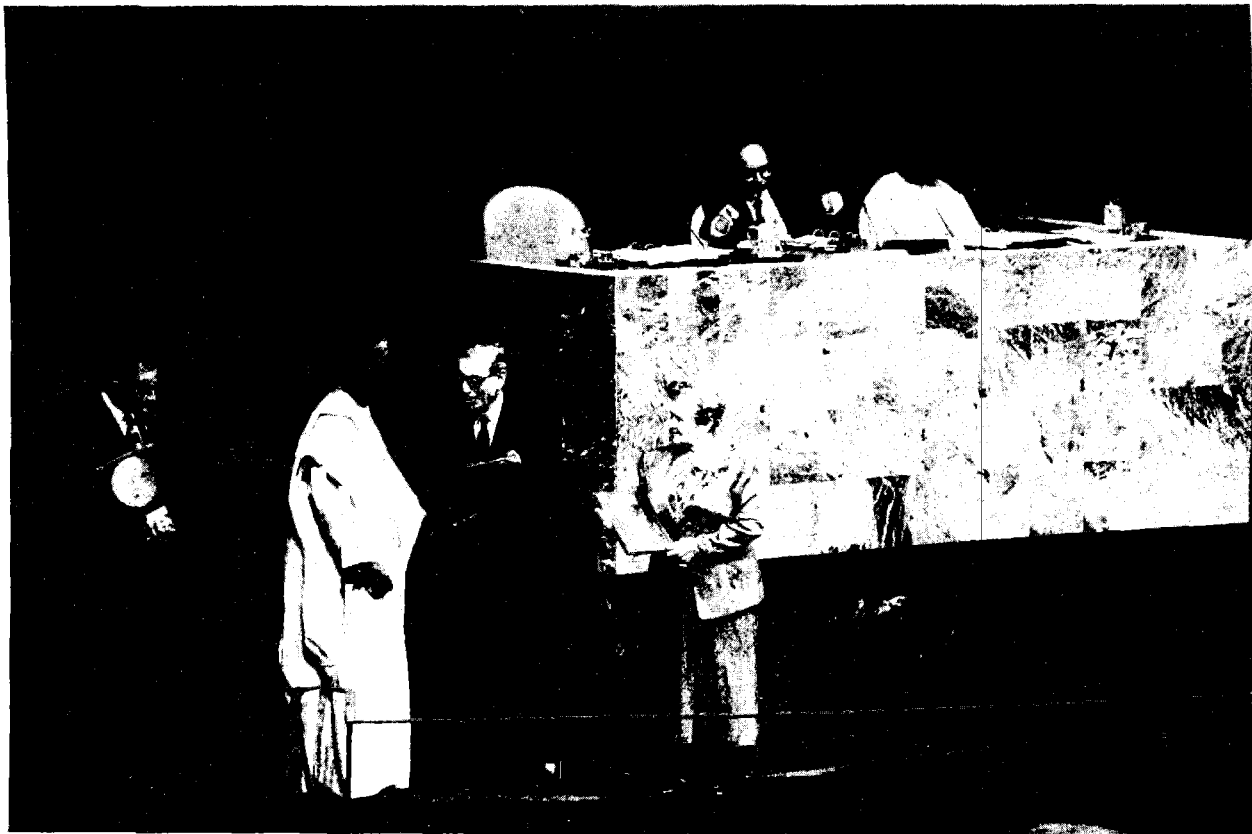
The prize is only awarded once every five years. It is among the most prestigious in the human rights field. Past recipients, chosen for their "outstanding achievements in the promotion and protection of civil and political rights or economic, social and cultural rights," include U Thant, Nelson Mandela, Martin Luther King, the International Committee of the Red Cross and Amnesty International.

Among the members of the Selection Committee for the 1993 prize were the President of the General Assembly, and the chairmen of the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, and the Commission on the Status of Women.

The UN Human Rights Prize is the fourth major award received by the ICJ in the last fifteen years, the others being:

- the first European Human Rights Prize (1980);
- the Wateler Peace Prize (1984); and
- the Erasmus Prize for Human Rights (1989).

The ICJ issued a statement announcing the award and expressing its gratitude for the honour and for the recognition that it gave to its work.



UN Secretary-General, Boutros Boutros-Ghali, presents the UN award to ICJ Secretary-General, Adama Dieng, at a ceremony at the UN Headquarters, New York, on 10 December 1993.

Commission Activity and Members

New Members

During the triennium, the ICJ elected eleven new Commission Members:

In January 1993:

Mohammed Bedjaoui (Algeria), judge of the International Court of Justice;

Marie José Crespín, judge, member of Senegal's Constitutional Council and member of the CIJL advisory board;

Florence Ndepele Mumba, Investigator-General for Zambia;

Hipólito Solari Yrigoyen, member of the Argentinian Senate and Chairman of the Human Rights Committee of the Inter-Parliamentary Union.

In June 1993:

Professor Daniel Henri Marchand, Professor of Social Law at the *Conservatoire national des arts et métiers* and member of the Executive Committee of *Libre Justice*, the ICJ's French national section;

The Right Hon. Sir Robin Cooke, President of the Court of Appeal, New Zealand and Member of the CIJL Advisory Board;

The Right Hon. Sir William Goodhart QC, advocate at the Bar of England and Wales and Chairman of the Executive Committee of Justice, the ICJ's British national section.

In December 1993:

Mrs. Gladys Veronica Li QC, Deputy High Court judge, Hong Kong and acting Chairperson of Justice, Hong Kong, the local ICJ national section.

In December 1994:

Mr. Arthur Chaskalson, President of the Constitutional Court, South Africa;

Professor László Sólyom, Professor of Law at the Eötvös Lorand University, Budapest;

Dr Daniel Thürer, Professor of International/European constitutional and administrative law at the University of Zurich and founding President of the ICJ Swiss national section.

Honours Conferred on Members

Honours conferred on ICJ Commission Members included:

- the appointment of Professor Christian Tomuschat (Germany), member of the Executive Committee, as independent expert on human rights in Guatemala for the UN Commission on Human Rights;
- the election of Dato' Param Cumaraswamy (Malaysia) as the 13th President of LAWASIA in September 1993;
- the appointment of Justice Michael Kirby (Australia), chairman of the Executive Committee, as UN special rapporteur for human rights in Cambodia;
- the election of Dr Mohammed Bedjaoui (Algeria) as President of the International Court of Justice in The Hague; and

- the appointment of Dato' Param Cumaraswamy (Malaysia) as special rapporteur on the independence of the judiciary and the legal profession by the UN Commission on Human Rights on 4 March 1994.

Deaths

During the triennium the ICJ was deeply saddened by the death of many of its members and former members:

Augusto Conte MacDonell of Argentina - Commissioner from 1984 to 1989 - on 5 February 1992;

T.S. Fernando of Sri Lanka - Commissioner since 1962 and President of the Commission from 1966 to 1976 - on 23 January 1993;

Sir Adetokunbo Ademola of Nigeria - honorary member and former Commissioner - on 29 January 1993;

Torkel Opsahl of Norway - honorary member and former Commissioner - 16 September 1993;

Walter Ganshof van der Meersch of Belgium - honorary member for 16 years - 1994

José T. Nabuco of Brazil - founding member of the ICJ, honorary member and former Commissioner - in January 1994;

Edward St John QC of Australia - honorary member and former Commissioner - on 24 October 1994;

Sir Guy Powles of New Zealand - honorary member, former Commissioner and vice-President of the New Zealand national section - on 24 October 1994.

International Promotion of Human Rights and the Rule of Law

The United Nations and Other International Organizations

The Commission on Human Rights and its Sub-Commission on the Prevention of Discrimination and the Protection of Minorities

During the triennium, the ICJ maintained its high profile within the United Nations, most particularly in connection with the annual meetings of the Commission on Human Rights (the Commission) and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities (the Sub-Commission). Its activities included presenting reports, making oral and written interventions and lobbying government delegates and members of UN bodies to react to situations that, it considered, struck at the heart of the observance of the Rule of Law and the protection of human rights or to support or initiate action on issues that would strengthen such observance and protection.

Articles appeared in the ICJ Reviews Nos. 48 and 52 on the 1992 (48th) and 1994 (50th) sessions of the Commission and in ICJ Review No. 53 on the 1994 (46th) session of the Sub-Commission.

The following are some of the specific subjects of special concern that were tackled by the ICJ in those fora during the triennium.

The Independence of the Sub-Commission

At the close of the 1994 session of the Sub-Commission, the ICJ made a statement regretting the lack of independence displayed by

some of that body's members and the resultant selectivity with which it continued to deal with country situations that required urgent action. It stressed that, despite some undeniable accomplishments, the Sub-Commission was faced with "a serious question of credibility." As a body of independent experts rather than of governments, it should be the place in the UN system where human rights violations are "considered on their merits rather than on the political strength of the various competing interests."

The ICJ said that it was regrettable that, despite guidelines by the Commission on criteria for ensuring the appointment of independent and impartial experts to the Sub-Commission, many such experts had an unacceptable degree of association with the governments by whom they were nominated.

The ICJ issued a statement commenting on the achievements and failures of the Sub-Commission, in particular the disappointing lack of independence in some quarters.

Forced Disappearances

At the start of 1992, the ICJ was involved in a victory that would ease the path in bringing perpetrators of gross human rights violations to justice, when the Commission adopted a draft Declaration on the Protection of all Persons from Enforced Disappearances that, *inter alia*, classed the systematic practice of disappearances as being "of the nature of a crime against humanity." The ICJ had played a key role in the preparation and promotion of the draft since the beginning, when it had helped to prepare the first text in 1988. Up until then there had been no international instrument specifically outlawing the practice of disappearances. In an intervention following the draft's adoption by the Commission, the ICJ paid homage to the relatives of the disappeared "who have worked for over a decade to achieve this kind of declaration and whose labours are now near fruition."

In a statement issued in March, the ICJ praised the "landmark draft" that was to go to the General Assembly for final approval. The text of the declaration, as adopted by the General Assembly was published in ICJ Review No. 49 (December 1992).

The Declaration was a powerful new weapon in the fight against impunity, which was a major focus of ICJ activity during the triennium (see the section on Impunity and International Criminal Court - below).

Torture

A joint effort by the ICJ and the Association for the Prevention of Torture (the former Swiss Committee Against Torture), supported by the Swiss and Costa Rican governments, led to the adoption (by consensus) of the draft Optional Protocol to the Convention against Torture at the 1992 session of the Commission.

In an intervention before the Commission, the ICJ said that the large number of sponsors was "a stimulus to continue our work on this question."

The ICJ was subsequently an active contributor to the work of the UN working group set up to consider the draft.

Special Rapporteur on the Occupied Territories

The ICJ continued its long-standing commitment to the promotion and protection of human rights in the Occupied Territories, with the support of its two affiliates there (*al-Haq* and the Gaza Centre for Rights and Law).

In addition to its usual reporting and lobbying activities, the ICJ was the moving force behind the proposal for the appointment of a special rapporteur on the Occupied Territories that was taken up by the Commission at its 1993 session. The ICJ's action had been spurred on by its alarm over the deteriorating human rights situation in the West Bank and Gaza and the deportation of 417 Palestinians to the Lebanon, following the killing of an Israeli soldier by Hamas.

The resolution received overwhelming support from African, Asian and Latin American countries. Certain developed countries voted against it. The ICJ expressed its regret over that attempt "to prevent the absolute application of international human rights and

humanitarian law," adding that "Israel should not be excluded from objective international scrutiny."

The ICJ cooperated with the special rapporteur (Mr. René Felber, Switzerland), following his appointment. In October 1994, he visited the Occupied Territories and met with representatives of the ICJ's West Bank affiliate, *al-Haq*.

[At the 1995 session of the Commission, the ICJ expressed its grave concern at the manner in which the special rapporteur had carried out his mandate and at the conclusions to which he had come (*inter alia*, calling for his mandate to be terminated). The ICJ stated that it was with great regret that it had "to agree that the Commission do away with Mr. Felber's services. We believe, however, that the essential mandate of the Special Rapporteur...should be maintained."]

Economic, Social and Cultural Rights

Reflecting its growing involvement in the realization of economic, social and cultural rights (including structures of poverty, the human rights aspects of sustainable development and issues of social justice), the ICJ was active in the Commission and Sub-Commission on the items dealing with extreme poverty, development and human rights and with fraudulent enrichment.

Extreme Poverty, Development and Human Rights

At the 1992 session of the Sub-Commission, the ICJ expressed its whole-hearted agreement with the findings of special rapporteur Mr. Danilo Türk, that structural adjustment programmes that fail to incorporate human rights into their working methods, policies and projects are probably limited in their effectiveness. The ICJ strongly recommended that the Sub-Commission conduct a special study on the justiciability of economic, social and cultural rights.

The issue was subsequently taken up by the ICJ at the 1993 and 1994 sessions of the Commission, at which it made interventions concerning the need to recognize extreme poverty as an obstacle to the enjoyment of human rights. The ICJ expressed the need for the

Commission to consider economic, social and cultural rights in the same way as it considered civil and political rights and presented proposals that included:

- the drafting of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights that would establish the right to individual petition; and
- the setting up of a body, such as a working group of the Commission, to study the justiciability of those rights.

In addition, at the 1994 session, the ICJ proposed that the time was ripe for a start to be made on the drafting of a convention on the right to development.

At the 1994 session of the Sub-Commission, at which a special rapporteur was appointed to examine the relationship between the enjoyment of all categories of human rights and income distribution, the ICJ intervened to stress the inseparable links between development, democracy and human rights as well as the concept of popular participation. [At the beginning of the year the ICJ had sent a mission to Mexico to investigate the insurrection in Chiapas that had arisen from a conflict that was deeply rooted in poverty and discrimination (see the section on The Americas - below)].

Fraudulent Enrichment

Interlinked with the ICJ's concerns regarding extreme poverty, development and human rights, was its stance against fraudulent enrichment by national leaders abusing the trust of their people.

At the 1992 session of the Commission, it expressed the importance it attached to a resolution (subsequently adopted by the Commission) seeking determined action "to combat the fraudulent or illicit enrichment of top State officials and the transfer abroad of the assets thus diverted."

The ICJ intervention supporting the resolution stressed the untold damage inflicted on Third World populations by fraudulent enrichment and the great seriousness with which it viewed such

practices. It stated that "[t]he Africans, Asians and Latin Americans who under the banner of human rights have overturned their corrupt regimes are waiting for your Commission to decide to examine the question of fraudulent enrichment by State leaders to the detriment of the public interest Some experts estimate the sum at \$200 billion, which could have been used to build schools and hospitals, to create jobs, to adequately equip courts of justice."

The ICJ also took the matter up in the Sub-Commission on several occasions and, at the 1993 session, re-emphasized the impediment caused by fraudulent enrichment and corruption in the realization of the economic, social and cultural rights of that large section of the population in the Third World living in absolute poverty. The ICJ proposed that all those who plunder public treasury for their personal benefit be made strictly accountable and that a special study of the issue be undertaken by the Sub-Commission.

Successful lobbying at that session of the Sub-Commission resulted in the appointment of a special rapporteur on the question of impunity regarding economic, social and cultural rights.

In September 1993, the ICJ issued a statement reiterating its long-standing commitment to combating fraudulent enrichment and offering its full support to Swiss writer and journalist Jean Ziegler in the legal suit brought against him by the former President of Mali, Moussa Traoré, whom Mr. Ziegler accused of having misappropriated some \$2 billion belonging to Mali (see also the section on Africa - below).

Special Rapporteur on Women

See the section on Women's rights - below.

Impunity

See the section on Impunity and an International Criminal Court - below.



Rwanda: urging to bring the murderers to justice, ICJ calls again for the creation of an International Criminal Court.

Emergency Sessions of the Commission

In 1992, the ICJ participated in the first-ever emergency session of the Commission (13 and 14 August) to discuss the "massive and deliberate" violations occurring in the former Yugoslavia (emergency sessions of the Commission had been proposed, in vain, by the ICJ as early as 1972). In its intervention the ICJ stressed the need for a continuing, on-the-spot, UN human rights presence.

Again in 1994, the ICJ participated in an emergency session of the Commission, this time concerning the wide-scale massacre and human rights abuses in Rwanda. The Secretary-General made an intervention in which he recalled the two hours of discussion he had had with President Habyarimana, during a mission to Rwanda and Burundi, just four days before the President's assassination and of which impunity had been the central theme. Anticipating a possible carnage in Rwanda the President "realizing the defects of the Rwandan judicial system" had asked the ICJ's help in restoring the Rule of Law and had requested the ICJ to send legal experts to Kigali to investigate alleged human rights abuses and report on them.

The ICJ urged the UN to nominate a special rapporteur on Rwanda (Professor René Degni-Segui was appointed) and to extend the mandate of the International Tribunal on the former Yugoslavia to Rwanda. It again voiced its support for the establishment of an international criminal court to try the authors of such crimes (see the sections on Impunity and an International Criminal Court and on Africa - below).

Human Rights Defenders

The ICJ has a special concern for the protection of human rights defenders, who are often the only ones courageous enough to take a stand for human rights and dignity in difficult and dangerous situations and who include the ICJ's own network of national sections and affiliates scattered throughout the world. Accordingly, the ICJ played a key role in the meetings of the UN working group on human rights defenders.

At the 1994 session of the Commission, the ICJ participated in a joint NGO statement concerning the necessity of enhancing protection for human rights defenders in the course of their legitimate activities under international law and pointing out that amendments had been proposed during the 9th session of the working group that would hinder those activities.

UN High Commissioner for Human Rights

The ICJ lobbied for the creation of the post of High Commissioner for Human Rights, both at the UN World Conference on Human Rights and during the preparatory meetings leading up to it.

In December 1993, the ICJ welcomed the creation of such a post and the appointment of Mr. José Ayala Lasso, a former Minister of Foreign Affairs of Ecuador, to it. Mr. Ayala Lasso's mandate was for four years and he was to be based in Geneva.

Although viewing the creation of the post as a positive step, the ICJ, nevertheless, had certain reservations about the mandate of the High Commissioner. It hoped that he would strike a balance between both promotion and protection activities.

The idea of a High Commissioner for Human Rights had been initiated by the ICJ in 1968 by its then Secretary-General, Sean MacBride who had also proposed a mandate for it - a mandate that the ICJ considered had much merit.

Gross Violations and Human Rights Situations in Specific Countries

The ICJ also made interventions regarding violations of human rights, including gross violations, in the following countries.

In the Commission, the ICJ intervened concerning:

Algeria (1993 - expressing concern at severe counter-insurgency measures taken by the government); **Angola** (1993 - condemning

extra-judicial killings); **Bougainville** (1993, 1994 - asking for a special rapporteur to be appointed to investigate the human rights situation; and expressing concern regarding violence by both sides to the ongoing conflict); **Colombia** (1993 - proposing the appointment of an independent expert, *inter alia*, to help improve the administration of justice and counter impunity); **Equatorial Guinea** (1993, 1994 - deploring the lack of the Rule of Law); **East Timor** (1993 - drawing attention to grave human rights violations); **Guatemala** (1992, 1993 - expressing the need for enhanced Commission scrutiny and deploring military repression of indigenous people); **Haiti** (1992, 1993, 1994 - calling for the appointment of a special rapporteur; stressing the need to ensure the return of the legitimate President; and condemning human rights violations by the military and security forces); **Iraq** (1994 - announcing the completion of the ICJ study on Iraq and the Rule of Law and summarizing the main findings); **Mexico** (1994 - highlighting violations by government troops during the Chiapas insurrection); **Myanmar (Burma)** (1992 - welcoming the decision to appoint a special rapporteur regarding the serious human rights situation and the lack of progress in transferring power after the democratic election victory); **the Occupied Territories** (1993 - expressing concern at the deteriorating human rights situation and calling for the appointment of a special rapporteur); **Peru** (1993 - expressing concern at growing human rights violations since the *coup d'Etat* and calling for an independent expert to investigate and report to the next Commission session); **Rwanda** (1994 emergency Commission meeting - see above); **South Africa** (1993 - calling for enhanced international involvement in the election process); **Sri Lanka** (1994 - urging that international forensic experts be allowed to investigate recently discovered mass graves); **Sudan** (1993 - drawing attention to serious human rights violations); **Togo** (1993 - drawing attention to serious human rights violations); **Western Sahara** (1993 - calling for strict respect of the peace plan approved by the Security Council and for steps to be taken to resolve problems of voter identification); and **Zaire** (1993 - suggesting action to help bring about democratic reform).

In the Sub-Commission, the ICJ intervened concerning:

Algeria (1993 - expressing concern at severe counter-insurgency measures taken by the government); **Colombia** (1992 - expressing concern at the breakdown of the Rule of Law (the ICJ submitted a document on states of emergency in Colombia to the special

rapporteur)); **East Timor** (1992, 1993 - expressing concern at human rights violations and drawing attention to short-comings in the trial of Xanana Gusmao); **Egypt** (1993 - expressing concern over the measures taken to combat violence, *inter alia*, the setting up of special courts that undermined the Rule of Law and the independence of the judiciary); **Guatemala** (1992 - concerning the protection of indigenous peoples); **Israel** (1993 - stressing that Israeli raids on south Lebanon were, *inter alia*, in violation of international law); **Nigeria** (1993 - highlighting the deterioration in the political situation); **the Occupied Territories** (1993 - denouncing Israeli policy, *inter alia*, closure of the West Bank and Gaza, travel restrictions, curfews and deportations); **Peru** (1992, 1993 - expressing concern over the widening use of the death penalty and trials conducted by hooded judges); **South Africa** (1993 - calling for enhanced international community involvement in the election process); and **Thailand** (1992 - expressing concern at the breakdown of the Rule of Law).

Working Groups, Special Rapporteurs and Independent Experts

The ICJ contributed extensively to the work of the various UN working groups set up to examine particular issues (for example, those on torture, the organization of the work of the Commission, arbitrary detention and states of emergency).

It also continued to give input to the special rapporteurs and independent experts appointed by the Commission and Sub-Commission to advise and report on issues and situations of special concern. At the 1994 session of the Commission, the mandate of the ICJ Legal Officer for Latin America, who had been appointed UN special rapporteur for Equatorial Guinea, was renewed, as was the mandate of the Chairman of the ICJ Executive Committee, Justice Michael Kirby, who had been appointed special representative of the UN Secretary-General to Cambodia.

Other UN and Inter-Governmental Bodies

The ICJ continued to provide information to various UN and other inter-governmental bodies such as the UN Centre for Human

Rights; the Committee on the Rights of the Child; the Human Rights Committee; the Commission on the Status of Women; the International Law Commission; the UNHCR; the Organization of African Unity; the Organization of American States; and the Council of Europe, as well as regularly attending, or being represented at meetings of such bodies and contributing in other ways to their ongoing work. This ICJ input ranged from, for example, lecturing at courses given by the UN Centre for Human Rights, both in Geneva and elsewhere; to submitting information to the Committee against Torture; intervening with the Council of Europe on the reform of the supervisory machinery of the European Convention on Human rights (aiming at the creation of a single European Court of Human Rights); and talking to representatives from Central and Eastern European countries on the independence of the judiciary.

Non-Governmental Organizations and Other Bodies

Members of the ICJ staff and other ICJ representatives, including those from ICJ national sections and affiliates, participated in many conferences, seminars, roundtables and panels organized by non-governmental organizations and other bodies. In addition to contributing to the general discussion during these meetings, ICJ staff members often contributed working papers, chaired group and plenary sessions, gave speeches, lectured, etc.

These activities ranged from participating in a workshop on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights held at Maastricht University (which resulted in a set of principles and guidelines now being studied by the UN Sub-Commission); to speaking to professors from Spain and Latin America on discrimination in UN treaties and regional conventions at a conference organized by the International Training Centre on Human Rights and Peace, in Geneva; to attending an advisory committee meeting for the Carter-Menil Human Rights Prize at the Carter Centre of Emory University in Atlanta, Georgia; to giving the opening address at a seminar on the South and a New World Order, sponsored by the Special NGO Committee on Development at the UN in Geneva; to lecturing at a course on human rights for legal practitioners, organized by the Netherlands Institute of Human Rights under the auspices of the Hague Academy of International Law; and giving courses at the International Institute of Human Rights in Strasbourg.

Among the organizations with which the ICJ was involved were the International Movement against all Forms of Discrimination and Racism; the World Council of Churches; Amnesty International; the Friedrich Naumann Stiftung; the *Ecole Nationale de la Magistrature* (Paris); the Global AIDS Policy Coalition; the University of Toronto; the International Institute of Humanitarian Law (San Remo); the Landegg Academy; the Special Committee of International NGOs for Human Rights; the Council for International Organizations of Medical Sciences; the International Service for Human Rights; the North/South Centre (Strasbourg); the Raoul Wallenberg Institute; and the International Bar Association.

The UN World Conference on Human Rights

A major focus of endeavour for the ICJ during the triennium was the UN World Conference on Human Rights and the organization was very active both during the lengthy preparatory phase and during the Conference itself.

The main thrust for the ICJ's activities with respect to the Conference was its campaign for an international criminal court to deal, *inter alia*, with the question of impunity. That campaign and other related ICJ activities are outlined in the section on Impunity and an International Criminal Court (below).

During the preparatory phase, the ICJ participated in the regional meetings of the UN preparatory committee in Tunis (November 1992 - the ICJ funded some 30 African NGOs to enable them to attend that meeting); San José (January 1993); Bangkok (March/April 1993); and an Arab "satellite" meeting in Cairo. The ICJ made several statements at those meetings concerning, *inter alia*, the protection of women's rights; combating extreme poverty, the need for better coordination between the universal and regional human rights systems; and impunity and the need for an international criminal court. The ICJ participated in special NGO meetings held before the San José and Bangkok meetings.

The ICJ also attended a number of other preparatory meetings including the various UN preparatory committee meetings that took

place in Geneva; a preparatory meeting of experts held in Turin (Italy) on 18 July 1992 and organized by the UN Centre for Human Rights; and an international colloquium convened by the Carter Center in Atlanta (US) on 14 and 15 January 1993 in collaboration with the UN and other international human rights organizations, to formulate concrete proposals for strengthening the UN human rights system.

Staff members participated in the three-day NGO forum that was held immediately prior to the Conference.

The Conference itself, which was held in Vienna from 14 to 25 June 1993, attracted some 5,000 people - approximately 2,000 delegates, 2,000 NGO representatives and 1,000 journalists.

The ICJ was well represented, counting in its delegation its President and Secretary-General, the Chairman and three members of the Executive Committee, two Honorary Members, the Director of the CIJL (who also had been selected as a member of the NGO liaison committee), the legal officers for Africa, Asia and the Americas and the assistant to the Secretary-General. Many representatives of ICJ national sections and affiliated organizations also attended the Conference.

The ICJ held two workshops during the Conference: one devoted to a debate on the proposed international criminal court and the other on women's rights. The latter attracted representatives of women's groups from all regions of the world.

In addition to campaigning for an international criminal court, which provided that main thrust for its activities related to the Conference, the ICJ also concentrated on stressing the need to reinforce UN mechanisms, i.e. that rather than new standards, what was necessary was improved implementation of existing mechanisms - a proposal that was well received by participants. Just prior to the Conference, the ICJ had issued a two-part study entitled *Towards Universal Justice*, the second part of which detailed the UN mechanisms responsible for ensuring respect for international human rights law and was intended to provide a discussion base for the issue during the Conference. The first part of the study dealt with the ICJ's proposal for an international criminal court (see the the section on Impunity and an International Criminal Court - below).

The ICJ's activities on this issue bore fruit, with the World Conference, in its final Declaration and Programme of Action recommending that the Commission on Human Rights "examine the possibility for better implementation of existing human rights instruments at the international and regional levels..."

At the end of the Conference, the ICJ issued a statement giving a three-page preliminary evaluation of the meeting in which it stated that:

"amongst the most important gains of this conference is the ability of the human rights movement to organize itself [The ICJ] welcomed the affirmation of the universality, indivisibility and interdependence of human rights...Nevertheless, [it] expressed concern that some of the adopted principles constitute regression. Amongst the main weaknesses of the Conference is that it shied away from creating new mechanisms for implementation."

There then followed a listing of "Positive Trends" and "Negative Trends" that, in the ICJ's opinion, had emerged from the Conference. It expressed the hope that the latter "could be rectified in future UN activities. The task that lies ahead is to ensure that they be followed up."

The text of the preliminary evaluation was published in ICJ Review No. 50 (a special issue devoted to the Conference), which also included the text of the Vienna Declaration and the Programme of Action that issued from the Conference.

Impunity and an International Criminal Court

During the triennium a major focus of endeavour for the ICJ was its campaign for the setting up of an international criminal court, to bring to account those responsible for grave violations of human rights that, at present, are committed on every continent and to counter the impunity often afforded to those who carry out such violations.

The idea of setting up such a court was not new to the ICJ. In 1968, the year of the first World Conference on Human Rights, its then Secretary-General, Sean MacBride had been one of the first to propose the creation of a "Universal Court of Human Rights," stressing that "(e)ffective implementation machinery should conform to judicial norms, it should be objective and automatic in its operation; it should not be *ad hoc* nor dependent on the political expediency of the moment."

The time had not been ripe for the setting up of such machinery then, but a quarter of a century later a more willing international climate existed (engendered in large measure by the reaction to the bloodshed in the former Yugoslavia and, later, to the slaughter in Rwanda) and the ICJ profited from the opportunity to bring the ghost of an idea of an international criminal court a long way towards becoming reality.

One of the first steps, was a meeting organized by the ICJ and the French *Commission nationale consultative des droits de l'homme* (CNCDH) under the auspices of the UN in November 1992. Entitled the *International Meeting Concerning Impunity for Perpetrators of Gross Human Rights Violations*, it brought together some 60 experts from around the world (there was also strong NGO and governmental representation).

The experts, after noting that impunity stemmed less from the absence of laws than from insufficient mechanisms to apply them, addressed an appeal to the international community, *inter alia*, that a proposal be made to the World Conference on Human Rights, to take place the following year, that an international criminal court be set up.* The ICJ took up that appeal - giving substance to the concept of such a court and preparing a campaign geared towards its realization.

A statement formally launching the ICJ campaign was issued in May 1993, just prior to the World Conference on Human Rights. At

* A commentary on the meeting appeared in ICJ Review No. 49 (December 1992) and a compilation of the papers presented was published under the title *Justice - Not Impunity*.

the same time the ICJ issued a position paper - *The Establishment of a Permanent International Penal Court* - which was the text of the first part of its two-part study *Towards Universal Justice*. That position paper contained the following six major recommendations with respect to a future international criminal court; that it should:

1. be a full-time permanent, impartial and independent body associated with the United Nations;
2. be composed of highly qualified, independent and impartial jurists representing all regions of the world;
3. have subject-matter jurisdiction over all crimes under international law, including those listed in the draft Code of Crimes Against the Peace and Security of Mankind;
4. ensure due process and fair trial guarantees, such as those provided for in Article 14 of the International Covenant of Civil and Political Rights;
5. contain an independent and full-time prosecutorial organ to bring charges against accused persons and to collect, prepare and present necessary evidence; and
6. accept complaints from a broad variety of sources, including States and individuals.

In its final Declaration and Programme of Action, the World Conference endorsed the issue of a permanent international criminal court and encouraged the International Law Commission to continue its work towards that end.

The ICJ put the substantive work it had carried out at the disposal of the International Law Commission (ILC) or, more specifically, the working group the ILC had set up to consider the question of an international criminal jurisdiction. Many of the ICJ's recommendations were taken into account by the working group during its consideration of the proposed draft Statute for an international criminal court in May/July 1993.

The resulting revised draft was again examined by the ICJ, which issued some "preliminary observations" in July 1994 setting

out continuing concerns regarding the complaints procedure; the act and crime of aggression; the establishment of the court; trials *in absentia*; and definition of subject-matter jurisdiction (later treaties).

At the meeting of the Sub-Commission in August 1994, the ICJ urged that body to call for the urgent adoption of the draft Statute, that had by then been submitted to the General Assembly by the International Law Commission, and reiterated some of its remaining concerns regarding the substance of that draft. It welcomed the positive response of the Sub-Commission to that request.

Later that same year, the ICJ carried out extensive lobbying at the meeting of the General Assembly that was to consider the draft Statute. The General Assembly decided to create an *ad hoc* committee to examine the document. The ICJ has followed the work of the *ad hoc* committee closely and, at the committee's second meeting, in August 1995, submitted an extensive, in-depth analysis of the draft Statute based on its previous work. This input was warmly received by the committee and its comments are being incorporated into the text prior to publication.

While carrying out its considerable body of substantive study and analysis, the ICJ had not been neglecting its campaign to rally international support for the setting up of an international criminal court. Although the campaign crystallized at the World Conference, much work had been done before then and in the time leading up to the Conference, the ICJ had, *inter alia*:

- obtained the unanimous endorsement for the idea of the court from the various regional UN preparatory committee meetings for the World Conference (Tunis - November 1992; San José - January 1993; Bangkok - March/April 1993; and the Arab "satellite" meeting in Cairo);
- delivered an oral intervention at the fourth UN preparatory committee meeting in Geneva (April 1993) which triggered extensive media coverage;
- helped secure the endorsement of the European Parliament for an international criminal court; and
- secured the adoption of the proposal by consensus at the NGO Forum held in Vienna a few days before the World

Conference (which contributed to the successful ICJ lobbying to ensure that the proposal was well-placed on the Conference agenda).

During the Conference itself, the ICJ held a workshop (on 18 June) devoted to a debate on an international criminal court, helping to give the issue a high profile. More than 200 legal experts, government representatives and NGOs attended and a lively discussion took place.

The ICJ also made interventions and undertook extensive lobbying in support of the proposal during the Conference and welcomed the specific reference to an international criminal court in the final document.*

Later that year, the ICJ's proposal for an international criminal court was a main subject of discussion at an international conference for the protection of war victims, organized by the Government of Switzerland in Geneva, August/September 1993. The ICJ participated in the meeting, which was attended by representatives of 160 countries as well as of many inter-governmental and non-governmental organizations. The representatives of approximately 40 States announced or reiterated their unequivocal support for the ICJ proposal in their speeches.

Tied in with the ICJ's campaign for a permanent international criminal court was the action it took with respect to bringing to book those responsible for the atrocities committed in the former Yugoslavia and Rwanda.

The participants at the ICJ/CNCDH International Meeting Concerning Impunity, in November 1992 (see above), had appealed for the impartial panel of experts responsible for investigating the violations of international humanitarian law committed in the former Yugoslavia to reach a conclusion "without delay so that this

* Section E, paragraph 92 of the final document (the Vienna Declaration and Programme of Action) - the text can be found in ICJ Review No. 56 (a special issue devoted to the World Conference), pages 114 to 136.

experience can be a first step in establishing an international penal tribunal, which is more essential than ever."

At the beginning of 1993, following up on that appeal, the ICJ made an intervention at the UN Commission, during the discussion on the human rights situation in the former Yugoslavia, that stressed the need to establish an international criminal court and called on the international community to support and strengthen the mandate of the *ad hoc* tribunal on the former Yugoslavia as a first step towards the establishment of such a court.

In May 1994, the ICJ made an intervention before the emergency session of the UN Commission, convened in the light of the slaughter in Rwanda in which, *inter alia*, it again vigorously supported the establishment of an international criminal court; urged the UN to extend the mandate of, what was by then, the International Criminal Tribunal for the former Yugoslavia to crimes committed in Rwanda; and urged the nomination of a special rapporteur on Rwanda to investigate the grave violations of human rights there. [Professor René Degni-Segui (Côte d'Ivoire) was appointed to the post.]

As stated above, in August 1994, the ICJ made an intervention requesting the Sub-Commission to recommend that the General Assembly adopt the draft statute for a permanent criminal court submitted to it by the International Law Commission. In that intervention the ICJ also stated that such a court, should become a mechanism of accountability for atrocities such as those committed in the former Yugoslavia and in Rwanda, and should be a means of guarding against the repetition of such action in the future. It also voiced its full support for the idea expressed in the report of the UN special rapporteur on Rwanda that "pending the establishment of such a permanent international court the UN should establish an *ad hoc* tribunal on Rwanda or, alternatively, should extend the jurisdiction of the International Tribunal on war crimes committed in the former Yugoslavia." The Sub-Commission made a recommendation along those lines.

The ICJ's wide-ranging activities with regard to the setting up of an international criminal court were closely tied to, and might even be said to have arisen from, its concern to find a means of eliminating

the impunity enjoyed by many perpetrators of human rights violations - particularly common after a change in regime (for example, the members of the ICJ mission to Sri Lanka in May 1992 expressed their concern over the executive decree, issued by General Suchinda as his last act in power, that granted amnesty to all those in authority who were involved in the massacre of pro-democracy demonstrators that had occurred in the country). The end of dictatorship and the advent of democracy in many countries in Latin America, Africa, Asia and Eastern Europe brought the issue to the forefront and underscored the need to have an independent, impartial body to prosecute and punish the guilty and to allow their victims to receive compensation.

As the then-ousted President Aristide of Haiti had said during a meeting with the ICJ at its headquarters in February 1992 "impunity is an illness the best cure is justice."

In August 1992, the ICJ submitted a study on Chile, Argentina and Uruguay to the UN Sub-Commission, which was examining restitution, compensation and rehabilitation for victims of gross violations of human rights. The conclusions of the study were, *inter alia*, that justice will prevail and international obligations will be met only when the respective governments ceased to provide impunity for the perpetrators of violations. An article on the Inter-American Commission on Human Rights' 1992 findings regarding Uruguay's 1986 amnesty law was published in ICJ Review No. 49 (December 1992): in its conclusion it stated that amnesties in Latin America "have rarely deterred and, at times, have become a license for these State agents to repeat the same crimes under the new governments. By conferring, and indeed, enshrining impunity, these laws have deeply divided civil society and compromised the very notion of the Rule of Law".

The ICJ's work on denouncing impunity continued in November 1992, with the publication of *A Breach of Impunity*, a book released by the ICJ and the Fordham University Press in New York in commemoration of the massacre of six Jesuit priests, their cook and her 15-year-old daughter three years previously.

The ICJ had attended the three-day trial of the nine members of the military charged with the crime. Two of the men had been

convicted and sentenced to 30 years in prison, one tried *in absentia* and the others found innocent (even though they had confessed to the murders). This plus the fact that two of the lawyers concerned had fled the country for fear of reprisals raised the question of whether justice really had triumphed. However, in its report, the ICJ did commend El Salvador for taking a first step towards tearing down the "massive wall of impunity."

In the same month (November 1992), the ICJ (along with the CIJL) issued another report - *Chile: A Time of Reckoning* - concerning the unwillingness or inability of the judiciary to confront the authorities over flagrant human rights abuses during military rule from 1973 to 1990 (cases were usually transferred to military courts and culprits were often given amnesty and their cases closed).

At the beginning of 1993, the ICJ made an intervention at the Commission with respect to the situation in Colombia proposing that the Commission appoint an independent expert who, among other tasks, could provide assistance in improving the administration of justice, with a view to ending the practice of granting impunity to human rights violators there.

Continuing to expose situations that illustrated the desperate need for an international criminal court, the ICJ issued a statement in April 1993, concerning the trial of the ex-Chief of State of Mali, Moussa Traoré (charged with assassinations and voluntary woundings) and underlining certain shortcomings in the way in which it was conducted. The ICJ said that such a "political trial with a common law facade" reinforced its conviction of the need for an international criminal court to try crimes such as those committed by Moussa Traoré's regime.

In that same month, an encouraging sign that the cycle of impunity that prevailed throughout much of Latin America might be starting to crack occurred, in a historic judgment delivered by the Supreme Court of Bolivia. The Court sentenced former dictator Luis Garcia Meza and many of his collaborators to terms of imprisonment for the countless crimes they had committed when they had usurped power. The ICJ published an article in its Review No. 51 (December 1993) concerning this ground-breaking ruling against impunity.

In August of 1993, following the World Conference, the ICJ made an intervention before the UN Sub-Commission, reaffirming its view that impunity constituted an obstacle to democracy, a violation of the Rule of Law and an invitation for would-be violators to perpetrate more crimes in the future. The intervention stressed that, while the first line of attack against impunity should be through the national courts, often action was needed at international level and the most effective means of taking such action would be the creation of an international criminal court. The ICJ stressed the need for the speedy establishment of such a court and noted that the idea had been endorsed by consensus at the World Conference and the NGO Forum that preceded it.

Shortly after making the above intervention, the ICJ released the publication *Justice - Not Impunity* (see above), which received great praise from the Sub-Commission members and participants, particularly the two UN experts who had themselves recently co-authored a UN study on the same subject.

In November 1993, the ICJ transmitted information to the UN Centre for Human Rights about the situation of impunity in Nicaragua, concerning three amnesty laws adopted in 1990, 1991 and 1993, and of the particularly negative effects on society of the last one. The information was to be transmitted to the UN Sub-Commission experts in charge of a study on impunity.

The ICJ continued its fight against impunity in 1994. In February, the ICJ delivered a speech at a conference on impunity organized by the Swiss Section of Amnesty International in Geneva, outlining the ICJ's long-standing commitment to and campaign for the creation of an international criminal court.

Also in February, the ICJ attended a meeting on impunity organized by Mr. Louis Joinet, one of the UN rapporteurs on the issue.

At the 1994 session of the UN Commission on Human Rights, the ICJ made a statement in which it urged the international community to ensure that any future agreements with the *de facto* military authorities in Haiti excluded amnesty provisions leading to impunity for perpetrators of gross violations of human rights.

At the same session, the ICJ, in an intervention based on the report of its fact-finding mission, concerning violations of human rights by Mexican troops in Chiapas in January 1994, welcomed the amnesty law as a peace mechanism provided that those responsible for gross violations of human rights were brought to justice and did not benefit from impunity for their actions.

On 3 May, the Secretary-General met Mr. Don McKinnon, Minister of Foreign Affairs of New Zealand in Wellington. Their discussions focused on the need for an international criminal court, the establishment of which had the full support of New Zealand.

At the 1994 session of the Sub-Commission, the ICJ, referring to the study by the special rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights, stated that those indemnity rights constituted an important dimension of the world-wide battle against impunity and offered to collaborate with the UN body on the matter.

In October 1994, the ICJ issued a statement saying that the return to the Rule of Law in Haiti "compels bringing to justice the perpetrators of the gravest human rights violations." The statement was made just as the Haitian parliament held an extraordinary session at the request of President Aristide to consider the question of an amnesty for those who acted under the previous military regime. The ICJ further stated that international law did not permit the granting of a total amnesty for those who violated international law, "[i]nternational law provides that a government cannot escape from its legally contracted obligations by simply adopting a law of amnesty."

At the seventh ICJ workshop on NGO participation in the African Commission on Human and Peoples' Rights, held in October 1994 (see section on Africa - below), it was recognized that the creation of an international criminal court had become a pressing issue in the context of the civil war in Rwanda.

Women's Rights

During the triennium, the ICJ's main activities with respect to women's rights were carried out at the regional and international levels. The regional focus was largely on seminars geared to empowerment - giving women the tools they need to confront violations of their rights. Such seminars grew out of the ICJ's long-standing programme to bring legal services to disadvantaged groups, of which women were one of the most seriously affected. Internationally, the ICJ focused on highlighting women's issues in various fora (*inter alia*, the need to include women in the decision-making process in human rights structures, including the various UN bodies and the African Commission for Human and Peoples' Rights) and also drawing attention to abuses of women's rights.

Seminars

The ICJ held three seminars dealing (wholly or partly) with women's rights during the triennium: two in Africa and one in Asia.

Ghana and Burkina Faso

In July 1993, two five-day seminars were held in Africa - one in Accra, Ghana and the other in Ouagadougou, Burkina Faso - on the theme Legal Services for Rural and Urban Poor and the Legal Status of Rural Women. With respect to women's rights, the seminars were designed to identify factors contributing to the low legal status of rural women and explore ways of improving that status. (The seminars also examined the role of paralegals in the delivery of services to the urban poor and sought to formulate concrete plans for establishing paralegal training projects in anglophone and francophone West African countries (see the section on Africa - below).

Field trips were organized in conjunction with both seminars: in Ghana, *inter alia*, to the Aboki Women's Development Association Centre - a peri-urban village agricultural community founded by women in 1987; and in Burkina Faso, *inter alia*, to Basnere, where food and commodity goods were being produced by women.

In their respective opening speeches, the Vice-President of Ghana, represented by the Attorney-General, and the prime Minister of Burkina Faso deplored the existing deficient legal status of women, and rural women in particular, and pledged their countries' support in enforcing laws guaranteeing equal rights for women.

In both seminars, the participants stressed that the gap between recent landmark non-discriminatory legislation and its implementation remained deep and that the elevation of the legal status of women, especially rural women, was an essential element in ensuring meaningful and sustainable development.

The Ghana seminar was organized in collaboration with the International Federation of Women Lawyers and Women in Law and Development in Africa and was attended by 40 experts from anglophone West African countries.

The Burkina Faso seminar was organized in collaboration with the *Mouvement burkinabé des droits de l'homme* and the *Réseau femmes africaines des droits humains* and was attended by 43 experts from francophone West African countries.

Fiji

In April 1994 the ICJ and the Fiji Women's Rights Movement jointly organized a seminar, in Fiji, on Women and the Law in the Pacific. Some 40 participants representing 15 States and territories took part.

The objective of the seminar was to examine relevant laws and issues affecting women in the Pacific island States. Discussion also focused on efforts undertaken in different countries to provide legal literacy and develop legal aid and paralegal training programmes; on UN conventions and fora in the domain of women's rights as well as the work of the ILO and Unesco; and the coordination of activities among women's organizations at the national, regional and international levels.

Participants produced conclusions and recommendations that included a call to facilitate NGO access to the UN World Conference

on Women (to be held in Beijing in 1995) and a request that the UN special rapporteur on violence against women (see below) visit the Pacific region.

The seminar was followed by a brain-storming session on land rights in the Pacific, with particular reference to women.

After studying, among other phenomena, the marginalization of women, their loss of status, authority and control over land and livelihood, the meeting proposed follow-up action at the national, regional and international levels.

ICJ Mission Regarding Former "Comfort Women"

In April/May 1993, the ICJ sent a mission to the Philippines, the Republic of Korea, the Democratic People's Republic of Korea and Japan to study the issue of the forced recruitment by Japan of so-called "comfort women" before and during the Second World War. The members of the mission, Ustinia Dolgopol (law lecturer at Flinders University of South Australia) and Snehal Paranjape (an Indian lawyer) interviewed over 40 victims, three former soldiers, representatives of the governments concerned and lawyers, academics, journalists and NGO representatives working in the area.

It was the view of the mission that the women interviewed, representative of some of the 100,000 to 200,000 women involved, had been abducted or deceived and had been compelled to provide "sexual services" to Japanese soldiers.

It was also the view of the mission that the government of Japan had to accept full responsibility for the creation, management and operation of the so-called "comfort houses," and that it was incumbent upon the government to create some mechanism to ensure quick compensation for the victims.

The ICJ raised the issue in the UN Working Group on Slavery in May 1993 and in the UN Sub-Commission in August of the same year (see below).

In September 1993, in the light of a Japanese announcement of a \$1 billion programme to provide "symbolic compensation" for the

victims, the ICJ issued a press release calling "once again for full rehabilitation of 'comfort women'." The ICJ set out the seven recommendations made by its mission regarding the mechanism whereby full rehabilitation and restitution of the women could be obtained. These included, *inter alia*, a full and complete disclosure of all information by Japan and an interim payment of \$40,000 to each woman who had come forward.

In September 1994, a draft of the ICJ report was sent to the governments concerned inviting their comments. Only the Government of the Philippines submitted written comments, most of which were reflected in the report.

The report itself - *Comfort Women: An Unfinished Ordeal* - was published in November 1994 and its release generated intense interest among the press; ICJ representatives gave numerous interviews to the media. The two members of the mission travelled to Tokyo in December 1994 to discuss the report's recommendations with various government officials.

Activities in the United Nations

In May 1993, the ICJ made an intervention before the UN working group on contemporary forms of slavery concerning its recent mission to Japan to examine the issue of the so-called 'comfort women' made use of by Japan during the Second World War. Copies of the preliminary report were made available to interested parties.

At the 1993 session of the UN Sub-Commission, the ICJ made an intervention underlining that, while 111 governments had ratified the Convention on the Elimination of All Forms of Discrimination Against Women, many of them had made reservations that, in reality, emptied the Convention of much of its formal content. The ICJ pointed out the many traditional, religious and cultural policies that continued to oppress, exploit and discriminate against women in many countries. It stressed that the time had come to recognize the role and equal participation of women in development and to implement national and international programmes for assistance to women's grassroots organizations, to assert legal recognition of the economic, social and political status of women and to establish affirmative action programmes for women in leadership roles in

government and regional and international organizations, including the UN.

As the session was drawing to a close, the ICJ asked the Sub-Commission to prepare a report on sexual slavery and the Sub-Commission appointed Ms Linda Chavez to that task. The ICJ noted that such an appointment was particularly timely, bearing in mind especially the atrocities being committed on a daily basis against women and girls in Bosnia and Herzegovina. It also drew attention to past massive violations committed by the Japanese forces in Southeast Asia involving the so-called 'comfort women' and noted its mission to investigate that issue in April of that year.

Following its raising of the 'comfort women' issue in the Sub-Commission, the ICJ welcomed the official statement of the Government of Japan, recognizing its responsibility to the victims. The ICJ urged the international community to put pressure on Japan to ensure that compensation and restitution were provided for the women involved.

At the 1994 session of the Commission, the ICJ made an intervention in which it recalled the message of the 1993 UN Conference on Human Rights in Vienna that "women's human rights must be integrated throughout UN activities," and called for the appointment of a special rapporteur on violence against women as a "necessary first step to enhancing government accountability for gender-based violence." Mrs. Radhika Coomaraswamy (Sri Lanka) was subsequently appointed to that task.

In its Review No. 53 (December 1994), the ICJ published the text of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

***ICJ Workshops on NGO Participation in the Work
of the African Commission on Human and Peoples'
Rights and the African Charter***

The question of women's rights were extensively debated in the ICJ workshops on NGO Participation in the Work of the African

Commission on Human and Peoples' Rights that took place in the period 1992 to 1994.

More specifically, during the third such workshop, in October 1992 (see the section on Africa - below), a special focus was placed on the situation of women in Africa. Discussions took place, on the historic marginalization of women that affects the very notion of equality. Participants decided on several concrete measures designed to ameliorate the "dismal" situation of women's rights in Africa. They recommended that the African Commission appoint a woman independent expert as special rapporteur on the rights of women and prepare a general report on women's rights in the African Charter taking into account the key role of women in the implementation of the right to development.

In January 1993, the ICJ organized a brainstorming session on the African Charter on Human and Peoples' Rights (see the section on Africa - below) designed to complement the work of the above workshop. Participants, who included six members of the African Commission, the representative of the Secretary-General of the Organization of African Unity, human rights experts, academics and lawyers, recommended, that "the African Heads of State and Government and the OAU give women an larger and more dominant role in the various organizations responsible, on the continent and elsewhere, for the promotion of the dignity and interests of Africa..."

At the fourth workshop, held in March 1993, all participants agreed on the necessity of electing women commissioners and re-emphasized the need to appoint a women rapporteur to study the question of women's rights under the Charter. This latter issue was taken further at the sixth workshop, in April 1994, during which participants stressed the "vacuum that exists with regard to women's rights," and urged the rapid drafting of an additional Protocol to the African Charter on women's rights issues.

Other Activities

In February 1992, the ICJ discussed gender bias in a talk on the Educative and Reformatory Role of the Judiciary at the UN office at Geneva, in the first of a series of workshops for the International

Project to Promote Fairness in Judicial Processes, sponsored by the University of Calgary Law School.

In March 1992, the ICJ was one of the speakers at a ceremony, at the UN building in Geneva, to observe International Women's Day.

During the NGO Conference on Human Rights, Democratization and Development organized in April 1992 by NOVIB (the Netherlands Organization for International Development Cooperation) in The Hague, the director of the CIJL was elected to the Steering Committee on Women, Development and Human Rights.

In May 1992, the ICJ attended a seminar on Women and the Law, organized, in Tunis, by the Women's Committee of the Tunisian Bar Association and discussed the personal status law regarding Palestinian women.

In December 1992, the ICJ was co-speaker at a seminar on strategies and actions to stop violations of women's human rights, held in The Hague and organized, *inter alia*, by NOVIB.

In November 1993, Ms Marie-José Crespín, ICJ Commission Member and member of the Constitutional Court of Senegal, participated on behalf of the ICJ and the CIJL in a conference on Justice and the Rule of Law organized by the government of Burkina Faso in Ouagadougou. Ms Crespín gave an address on Women and Justice: the Protection of Women in Law in which she called on governments to implement international norms for the promotion and protection of women's human rights, to take measures to put an end to violence perpetrated against women, and to improve women's access to justice.

In August/September 1992, the ICJ participated at a Consultation of Women's International Human Rights held at the Faculty of Law, University of Toronto. It was gathering of experts "perhaps unique in its concentration of expertise in advancing women's rights domestically, regionally and internationally." Participants at the Consultation collaborated in the preparation of a book - *Human Rights of Women: National and International Perspectives* -

(published by the University of Pennsylvania Press) to which the ICJ contributed.

In May 1994, the ICJ attended a meeting in Wellington (New Zealand) convened by the ICJ and the Wellington Women Lawyer's Association, in which the ICJ seminar in Fiji was discussed (see above).

In September 1994, the ICJ/CIJL participated in a highly successful conference, held in Jerusalem, on Women, Justice and Law: Towards the Empowerment of Palestinian Women, organized by *al-Haq*, the ICJ's West Bank affiliate.

Election Monitoring

During the triennium, the ICJ became substantially involved in monitoring elections and election preparedness, tasks that it undertook in seven countries, most memorably, a pre-election mission with regard to the first multi-racial elections in South Africa and most extensively with regard to elections in Madagascar. The ICJ's activities in this field were all sponsored by the European Community/European Union (hereafter the European Union (EU)).

Madagascar

The ICJ was present in Madagascar almost from the beginning of that country's journey on the road to a democracy. Charged by the EU with supervising the electoral process, it was involved during all preparatory stages of the elections (organizing seminars, collaborating with local NGOs, liaising with the media, etc.) as well as in the physical organization and setting up of the team of observers.

The ICJ's first task was to lay the groundwork for the referendum on a new constitution. Well in advance of the vote - in March 1992 - it sent three experts (ICJ Commission Member Robert Dossou, a lawyer from Benin; Albert Bourgi, a professor of law and political science at the University of Rheims, France; and

Assane Fall-Diop, a reporter with the African section of *Radio France International*) to Madagascar to evaluate the political and legal environment and to determine the role the ICJ could play.

Later, a month prior to the actual vote, an ICJ team organized a programme to provide better public awareness of the democratic process that included a seminar for the local media, a meeting with the National Electoral Council and the dissemination of information to NGOs and citizens to ensure that even voters in remote areas had access to necessary documents.

The team of international observers who had been selected by the ICJ were then put in place to monitor the actual polling on 19 August 1992. The ICJ coordinated the team of 50 observers from 14 countries in Europe, Latin America and Africa throughout the process. Most of the members were judges, lawyers or law professors but there were also legislators, journalists and members of human rights NGOs among their number. Before the referendum, the ICJ conducted a three-day training seminar for the team.

After successfully monitoring the referendum, the ICJ turned its attention to the presidential elections that were held, in two rounds, in November 1992 and February 1993. For each round the ICJ deployed some 68 observers, many of whom had also been involved in monitoring the referendum on the constitution.

The ICJ published a report on the second round of the presidential elections entitled *Observatoire international de la Démocratie à Madagascar: Second tour des présidentielles*.

The final stage in the ICJ's task in Madagascar was the monitoring of the parliamentary elections on 16 June 1993. The ICJ monitoring mission was headed by Mr. Jean-Gaston Moore President of *Libre Justice*, the ICJ's French national section.

Once the elections were finally over, the ICJ departed from the country, leaving behind an "extraordinary success that was the restoration of democracy in Madagascar."



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Guinea-Conakry

In April/May 1993, a four-member mission was sent by the ICJ to Guinea-Conakry at the request of the government and financed by the EU. The members of the mission were Albert Bourgi (France), Mamadou Diouf (Senegal), Alain Monod (France) and Bori Seyni (Nigeria)

The mission was mandated to examine the current situation in the country and evaluate the state of advancement of the electoral process in the judicial, technical and administrative fields. It also dealt with the issue of the educating and informing of voters. The objective was to obtain the necessary transparency, especially *vis-à-vis* the education and information process and regarding the establishment of an "observatory of democracy." The mission met with many representative of the government and administration, including ministers, as well as with politicians, human rights pressure group leaders, foreign diplomats and representatives of international organizations in Conakry.

The ICJ Secretary-General visited the capital several times in August and November 1993 to continue that process and meet with the head of State and ministers.

On 13 December 1993, however, the ICJ decided to withdraw from participation in the monitoring of the 19 December presidential election and not to send the planned 80 observers.

That difficult decision was based on the state of preparedness of the electoral process (for example, just a few days prior to the election, the National Electoral Commission was still not properly set up, even though it was entrusted with the task of overseeing the poll). The ICJ considered that more preparation was necessary and had, advised the government to postpone the election to the end of January 1994.

On 7 December 1993, the ICJ made a last attempt to convince the government to give the National Electoral Commission time to prepare for its task, for the sake of the credibility of the Guinean election.

However, the elections were held as scheduled.

On 13 January 1994, the ICJ issued a statement setting out the reasons for its withdrawing from its mission to observe the elections.

In September 1994, the Secretary-General had discussions in Conakry with members of both the National Electoral Commission and the National Council of Communication.

Malawi

The Secretary-General was mandated by the United Nations to mediate between the government of Life-President Banda and the opposition coalition of pressure groups, the Public Affairs Committee (PAC), to bring an end to the impasse that jeopardized the entire process concerning the national referendum to decide whether Malawi would retain its one-party system or opt for democracy.

In May 1993, the Secretary-General visited Lilongwe and held intensive discussions both with key Ministers and with the executive leadership of the PAC, *inter alia*, mediating on the question of whether a one-ballot-box or two-ballot-box system would prevail for the referendum. The Secretary-General's mediation resulted in a compromise based on a one-ballot-box/two-ballot-paper system that would, it was hoped, take account of the wide-spread illiteracy in the country while at the same time guarding against intimidation.

The four members of the ICJ team that had been mandated to monitor events in Malawi from 22 May to 23 June 1993 (the referendum itself took place on 14 June) were each assigned to the position of Senior District Observer, coordinating the observer functions in a district and in constant touch with the capital.

In the event, the voting was orderly and peaceful - the Malawian people opting overwhelmingly to install a democratic, multi-party system in place of the one-party system under Life-President Banda. The ICJ noted that there was no doubt that the international observers contributed positively towards the transparent and accountable manner in which the referendum was held.

The ICJ's involvement in Malawi's path towards democracy continued in the run-up to national elections and in February 1994, as a result of discussions with the EU, the ICJ sent Ms. Prisca Nyambe (Zambia) to Malawi as a human rights advisor to draw up a programme on human rights during the transition period. At the same time, Professor Peter Takirambudde (Botswana) also visited the country as a legal advisor on changes to the constitution.

In March 1994, Justice Michael Kirby, chairman of the ICJ Executive Committee, chaired the National Constitutional Conference in Lilongwe at the request of the government and of the UN.

As part of the preparation for the elections and at the request of the EU, the ICJ sent three monitors (Christopher Mulei (Kenya); Bacre Waly Ndiaye (Senegal); and Mater Diop (Senegal)) to observe the registration process in March 1994.

Gabon

In December 1993, the first pluralist election in the history of Gabon was held. The ICJ, the OAU, the ANC and the African-American Institute jointly participated in observing the process. The observers noted that, despite some deficiencies (that were later remedied), the people of Gabon had been able to cast their votes democratically.

In January 1994, the ICJ voiced its concern to Mr. Omar Bongo, President of the Republic, over the fact that three opposition leaders, two of whom were candidates in the presidential election, had allegedly been barred from leaving the country. The ICJ requested that the restrictions be lifted immediately.

The ICJ also voiced its preoccupation over the systematic jamming of radio station *Radio Liberté*, which was favourable to the opposition and the alleged attack against another station *Fréquence Libre*. The ICJ urged the government to take measures to bring the authors of those acts to justice.

Guinea-Bissau

In April 1994, the Secretary-General visited Guinea-Bissau and had discussions with government officials, politicians and other personalities concerning the presidential and parliamentary elections scheduled for 3 July 1994.

The Secretary-General subsequently participated in observing the first multi-party presidential and parliamentary elections in the country.

In August 1994, the ICJ congratulated the newly elected President Joao Bernardo Vieira and welcomed the transparency that had characterized his election. The ICJ stated that the election constituted a landmark for democracy in Africa and should remain a model to be followed by other States in the region.

In September 1994, the Secretary-General returned to Guinea-Bissau to have discussions with government officials and emphasized, *inter alia*, the need to reform the judicial system.

South Africa

The ICJ conducted a pre-electoral mission to South Africa from in September/October 1993, to evaluate the state of preparedness of the population with respect to the first multi-racial election in the history of the country to be held on 27 April 1994 (see also the section on Africa - below - for the 1992 mission to investigate violence in Natal and Transvaal).

The four-member team, which included the Secretary-General and the Legal Officer for Africa, held discussions with government ministers, political party leaders, church leaders, senior police officers and representatives of national and international organizations as well as South African citizens.

The mission received extensive coverage in the South African and international media.

On 6 October, the ICJ released a statement stressing that the elections should not be postponed and, on 11 October, it released the full text of the statement that had marked the end of the pre-electoral mission. That statement urged that there should be no delay and that the millions of people living in the "independent" States and homelands should also participate in the vote; set out the essentials for a free and fair election; outlined the problems *vis-à-vis* the police; and made suggestions regarding the new peace-keeping force and an increased role for the international community in helping with the elections.

In November 1993, the ICJ published the report of the mission - *Voting for Peace: an independent assessment of the prospects for free and fair elections in South Africa*.

The ICJ made numerous interventions before the UN Commission and Sub-Commission and issued many statements concerning the elections in South Africa.

On 10 May 1994, the chairman of the ICJ Executive Committee, Justice Michael Kirby, attended the ceremony for the inauguration of Mr. Nelson Mandela as President of South Africa at the invitation of the President-elect and the Chief Justice of South Africa. Justice Kirby and the Secretary-General stated on that occasion that it was appropriate for the ICJ to be represented since it had been involved in countless missions, sent numerous trial observers and participated in other activities in and out of South Africa, designed to support the process of change by lawful and constitutional means.

Sri Lanka

At the invitation of the Commissioner of Elections of Sri Lanka, the ICJ sent a two-member team to observe the parliamentary general elections in Sri Lanka in August 1994. The ICJ team (Dorab Patel, former Supreme Court judge of Pakistan and former chief chairman of the Pakistan Elections Commission; and Dato' Param Cumaraswamy, UN special rapporteur on the independence of the judiciary and President of Lawasia) joined 42 international observers from 12 countries and their task was to evaluate whether the elections had been fair and free. In their report the ICJ observers

concluded that "the election had been conducted with the highest democratic standards," except for the districts of Jaffna and Vanni where people had been subjected to "extensive intimidation" by an armed political group who had also presented candidates for the election.

General

In August/September 1992, the ICJ attended a seminar on Human Rights and the Electoral Process, organized by the UN Angola Verification Mission in cooperation with the UN Centre for Human Rights and the Raoul Wallenberg Institute on Human Rights in Angola. The ICJ representative delivered a paper on implementing human rights internationally.

In December 1992, on behalf of the UN Centre for Human Rights, the ICJ participated in a preparatory mission for the pre-election seminar to be held in Lesotho in 1993.

In January 1993, the ICJ participated in a seminar in Lesotho on Elections and Human Rights organized by UNDP. The ICJ was represented by Justice Enoch Dumbutshena (ICJ Vice-President); Justice Michael Kirby (Chairman of the ICJ Executive Committee) and the ICJ Legal Officer for Africa.

In May 1994, the Secretary-General took part in a Conference on the report of the International Electoral Institute Commission in Stockholm.

Activities in the Regions

Africa

The ICJ strengthened and deepened its activities in the continent during the triennium. In addition to developing its highly successful series of result-oriented NGO workshops that fed into the meetings of the African Commission on Human and Peoples' Rights (ACHPR), it organized seminars on the provision of legal services for disadvantaged groups and carried out assessment and monitoring with respect to elections in Gabon, Guinea-Bissau, Guinea-Conakry, Madagascar, Malawi and South Africa (see the section on Election Monitoring - above).

The ICJ also conducted six fact-finding missions (to Kenya; Mauritania and Senegal; Namibia; Rwanda and Burundi; and South Africa (2)) and sent observers to seven trials (in Côte d'Ivoire; Djibouti; Kenya; Mali/France (2); Mauritania; and Senegal), as well as making numerous interventions to both international bodies (see United Nations and other international bodies - above) and to governments and issuing many statements concerning human rights situations in specific countries, protesting abuses and urging States to conform to relevant international standards.

ICJ Workshops on the Participation of NGOs in the Work of the African Commission on Human and Peoples' Rights

During the triennium one of the ICJ's major achievements in the African region (in this case the "region" includes North Africa) was the great success of its regular series of workshops geared to encouraging and facilitating the participation of African NGOs in the work of the African Commission on Human and Peoples' Rights (ACHPR) and to increasing the attendance of African NGOs at the sessions of the ACHPR. A further goal was to develop NGO

strategies for working at the regional level - with each other and with the African Commission - as well as at the domestic level.

The ICJ workshops were very successful in achieving these goals - there was a steady increase in NGO participation in the sessions of the ACHPR (the number of NGOs with observer status rising from 72 at the beginning of the period under consideration to 129 at the end of it), Members of the ACHPR itself began to participate in the meetings, thus greatly helping to promote a dialogue with the NGOs. Much time was devoted to the practicalities of sending communications to the ACHPR, improving NGO lobbying skills and making effective use of the press.

Through the preparation, discussion and encouragement they obtained during the workshops, African NGOs started to have a major impact on the work of the ACHPR and there was a considerable increase in the number of communications being sent to that body.

The workshops also became a source of increasingly important and highly regarded recommendations submitted to the African Commission.

Another valuable result of the workshops was the development of cooperation and coordination among the NGOs themselves as they worked towards common goals.

Six workshops were held in the period under consideration. They took place in February/March and October 1992 (in Tunisia and The Gambia, respectively), March and November 1993 (in The Gambia and Ethiopia, respectively) and April and October 1994 (both in The Gambia), immediately prior to the 11th to 16th sessions of the ACHPR.

The ACHPR itself and the African Centre for Democracy and Human Rights Studies were two of the ICJ's main collaborators in the organizing of the workshops.

During the workshops, the ICJ gave participants practical advice on how to address communications to the ACHPR. It made available a booklet on the subject (*How to Address a Communication to*

the African Commission on Human and Peoples' Rights - published in January 1992) that was an invaluable source document for African NGOs in their dealings with the ACHPR and included information on the rights guaranteed under the African Charter, on how to obtain observer status and on how to handle urgent situations as well as providing, for example, flow-charts showing the procedure for handling NGO communications within the ACHPR and a copy of the official questionnaire concerning communications.

In addition to dealing with any practical issues concerning communications, each workshop also examined the agenda for the session of the ACHPR that would immediately follow it and prepared interventions, resolutions and recommendations to be fed into that session. Working groups were set up to examine issues of particular importance in depth; several members of the African Commission acted as chairmen of such working groups.

The ACHPR reacted positively to the NGO input resulting from the workshops and acted on several of the recommendations, for example, appointing a special rapporteur (the ACHPR Vice-President) on extra-judicial executions (with a mandate that made special mention of Rwanda) and setting up a three-member working group to examine the NGO proposal concerning the establishing of an African Court on Human and Peoples' Rights.

During the triennium the relationship between the NGO forum and the ACHPR developed to such an extent (at the October 1994 session, the African Commission adopted all seven of the resolutions drafted by the workshop) that the ICJ considers that the work of the forum has become part of the jurisprudence of the ACHPR. Such a development highlights not only the progress made by the NGOs concerned in working together on questions of substance but also underlines the importance and impact of their improved lobbying capacity.

At the March 1993 workshop, participants mandated the Africa desk of the ICJ to open a complaints register at ICJ headquarters in Geneva, to maintain a record of communications sent to the ACHPR and also to facilitate follow-up enquiries and increase the transparency regarding ACHPR action *vis-à-vis* those communications. Consequently, as from the end of June 1993, copies

of all communications sent to the ACHPR under Articles 55 and 56 of the African Charter were sent to the Central Register of Complaints at the ICJ's Geneva headquarters. In addition, it was requested that all communications already submitted to the Commission be sent to the ICJ to ensure that the central register was complete.

In addition to the above activities and as a complement to the NGO workshops, the ICJ organized a brainstorming session on the African Charter on Human and Peoples' Rights in January 1993. Participants included six members of the African Commission, the representative of the Secretary-General of the Organization of African Unity and human rights experts, academics and lawyers. The session was designed to allow a small group of human rights specialists to discuss how to provide the maximum assistance to the Commission as well as to ensure the promotion and protection of human and peoples' rights in Africa. The concrete steps proposed, included the strengthening of the human and financial resources of the Commission, the revision of its Rules of Procedure, the creation of an African human rights court and the encouragement of greater NGO participation.

The idea of an African human rights court was taken up at subsequent workshops and participants achieved a consensus on a number of issues concerning the mandate and structure of such a body. The ICJ invited the two rapporteurs of the working group set up by the workshop to consider the issue, a representative of the African Commission and a member of the legal department of the OAU for a brainstorming session in Geneva in order to prepare a final draft Protocol for the setting up of a Court and also an explanatory document which would be presented to OAU Heads of State later in 1994.

The Secretary-General, in fact, attended the June 1994 meeting of the OAU Council of Ministers to do so and to discuss the issue with heads of State and government.

During the sessions of the ACHPR, the ICJ continued to function in its advisory capacity by providing input and advice to NGOs who had an opportunity to address the ACHPR.

The ICJ also continued to make its own contribution during the sessions of the ACHPR, its interventions, *inter alia*, calling for urgent action regarding the senseless massacre in Rwanda; the ethnic conflict in Northern Ghana; the setback to democracy in Nigeria; and civil strife in Algeria.

Seminars

During the triennium, the ICJ continued with the programme it had started a decade earlier of organizing paralegal training seminars to provide disadvantaged groups at grassroots level with the basic skills to enable them to obtain a certain self-sufficiency in the provision of legal services in order to protect their rights and improve their status.

Paralegal Training Seminar for East Africa

In May/June 1992, the ICJ organized a paralegal training seminar in Nairobi, in co-operation with its Kenyan National Section. In preparation for the seminar, the ICJ Legal Officer for Africa had had consultations with the Kenya Section in Nairobi in April.

Participants came from Botswana, Ethiopia, Lesotho, Sudan, Tanzania and Uganda as well as from Kenya. The opening address was given by the Attorney-General of Kenya, Mr. Amos Wako (ICJ Commissioner in abeyance).

The seminar gave instructions on relevant paralegal skills, such as counselling, mediation and processing of human rights abuses, as well as discussing the exchange of resources and information and networking within East Africa and Africa.

Participants were presented with a draft for a handbook for paralegals in Africa to which they gave input (see below).

The seminar resulted in a list of recommendations, including: follow-up activities as a means of creating awareness at national

level; instruction in alternative means of dispute settlement to litigation; paralegal training for social activists and members of disadvantaged and marginalized groups; and designing paralegal training programmes in consultation with and according to the requirements of community-based groups.

*ICJ Seminars on Legal Services for Rural
and Urban Poor and the Legal Status
on Women (Ghana and Burkina Faso)*

The ICJ held two five-day seminars on the above topics, the first starting on 19 July 1993 in Accra and second on 27 July 1993 in Ouagadougou.

The aim of the seminars was, to explore ways of improving the status of women (see the section on Women's Rights - above) through the provision of legal services, to examine the role of paralegals in the delivery of legal services to rural and urban poor and to formulate concrete plans for establishing paralegal training projects in francophone and anglophone West Africa.

At each seminar the presentation of country reports was followed by lengthy discussion. Working groups focused on strategies in countering problems confronting the rural and urban poor, including empowerment skills, the use of the media, legal services in general and paralegal services.

All participants agreed that the elevation of the legal status of women, especially of rural women, was an essential part in ensuring meaningful and sustainable development. They also agreed that an extension of the traditional concept of legal services was strongly advocated and should include innovations such as paralegal training and legal literacy.

The participants then called for a strong and effective mobilization of all forces interested in promoting change for development, and made a number of relevant recommendations. They also debated the formulation of concrete plans of action to launch specific country paralegal training projects.

At the Ghana meeting, the opening speech was given by the Attorney-General of Ghana, representing the country's Vice-President. The meeting itself was organized in collaboration with the International Federation of Women Lawyers and Women in Law and Development and was attended by 40 experts from anglophone West African countries.

The seminar provided a second opportunity for the presentation of the draft ICJ paralegal trainers manual for Africa by its two authors. The manual had also been presented to participants at the paralegal training seminar for East Africa that had been held in May/June 1992 (see above). The manual was subsequently published by the ICJ.

At the Burkina Faso meeting, the opening speech was given by the Prime Minister and the meeting itself was organized in collaboration with the *Mouvement burkinabé des droits de l'homme* and the *Réseau femmes africaines et droits humains* and was attended by 43 experts from francophone West Africa.

Both seminars comprised an overwhelming majority of women participants.

Trial Observation

The ICJ continued to send observers to trials of particular significance in its struggle for the protection of human rights and the promotion of the Rule of Law.

In the African region seven trial observations took place in the following six countries.

Côte d'Ivoire

The ICJ sent an observer, Grâce d'Almeida Adamon, a lawyer from Benin, to the trial of René Dégni Ségui, Dean of the Law Faculty at the University of Abidjan and President of the Ivoirienne League of Human Rights. Professor Dégni Ségui had been arrested

with 19 others during a peaceful march in the capital in February 1992.

He was sentenced to two years in prison and a fine and the trial observer stated that he and his co-defendants had been subjected to humiliating treatment, in violation of the Universal Declaration of Human Rights and the Côte d'Ivoire Penal Code, and that the apparent intent of the proceedings had been to quash political opposition.

In May 1992, the ICJ issued a statement reporting on the trial and expressing concern at the threats to democracy in the Côte d'Ivoire.

In July 1992, the ICJ Programme Coordinator visited Professor Dégni Ségui in prison.

Following his release from prison shortly afterwards, the Professor thanked the ICJ for the action it had conducted on his behalf.

Djibouti

The ICJ sent Béatrice Séne, a French lawyer, to observe the trial of former Prime Minister Ali Aref Bourhan and his nephew, lawyer Aref Mohammed Aref, along with 61 others from in July 1992. They were arrested in January 1991, accused of plotting against the government and attempted assassination. Sentences ranged from five to ten years - the former prime minister received ten years; his nephew was acquitted.

In December 1992, the ICJ issued a statement expressing concern at threats to the life of the former prime minister and his 12 fellow detainees. The detainees had been on a hunger strike in protest at their conditions of detention and the ever-present fear of summary execution.

The ICJ deplored that, not only had the detainees not had a fair trial, but they were being held in inhuman conditions and subjected to threats of violence and death.

Kenya

The ICJ sent Mr. J. K. Kampekete, Senior Legal Officer to the Ombudsman of Zambia, to observe the trial of Koigi wa Wamere and others before the Nakuru Magistrate's Court in May 1994.

The trial was adjourned and was on-going as of December 1994.

Mali

Trial of Jean Ziegler (Paris)

In March 1992, the ICJ issued a statement announcing that it was sending Peter Rosenblum, an US lawyer from Illinois to observe the trial, in Paris, of Swiss writer and journalist Jean Ziegler, who was being sued for defamation by Moussa Traoré. Mr Ziegler had accused Mr Traoré of transferring more than \$2 billion belonging to Mali into private Swiss bank accounts. The trial was scheduled to begin on 1 April 1992 but was delayed.

The court proceedings eventually started in September 1993 and the ICJ stated that, in spite of strong presumptions of embezzlement of public funds by Moussa Traoré it had, up until then, been difficult to find legally admissible proofs of such misappropriation.

Trial of Moussa Traoré et al.

In January 1993, the ICJ sent Dr Laïti Kama, a Senegalese judge and expert of the UN working group on arbitrary detention to observe the trial of Moussa Traoré, the former Head of State of Mali (accused of assassinations and voluntary woundings), and 32 others.

In April 1993, the ICJ issued a statement announcing the publication of its observer's report of the trial and drawing attention to several short-comings regarding the rights of the defence and the

right to a fair trial. The observer considered that trial was, in fact, "a political trial with a common law facade."

The ICJ noted that while Mali had shown its willingness to commit itself to the democratic process and the Rule of Law, that commitment was empty of content if the principles of a fair trial and the rights of the defence were not respected.

Mauritania

In July 1992, the ICJ sent Aminata Mbaye, a lawyer from Senegal, to observe the defamation trial of Habib Mahfoudh of the newspaper *El Bayane*; Sy Mamoudou of *Eveil Hebdo*; and Bah Saleck of the *Mauritanie Nouvelle* before the *Tribunal correctionnel* in Nouakchott, Mauritania.

Senegal

In September/October 1994, Judge Pierre Borra, President of the French *Chambre honoraire* of the *Cour d'appel* in Paris, observed the trial of Clédor Séne, Assane Diop, Papa Ibrahima Diakhaté and Modou Kâ, in what was known as the "case of the assassination of Babacar Sèye" before the Assizes Court in Dakar.

Missions

Kenya

An ICJ fact-finding mission that arrived in Kenya in July 1993, held four days of intensive and crucial talks with President Daniel Arap Moi, government ministers, representatives of the judiciary and of political parties, religious leaders, parliamentarians, the commissioner of police, the commissioner of prisons (including a visit to Shimo La Tewa Prison in Mombasa), local government officials as well as ordinary citizens.

The participants in the high-level mission were Justice Enoch Dumbutshena from Zimbabwe (ICJ Vice-President), Dr Kofi Kumado from Ghana (member of the ICJ Executive Committee), Professor Daniel Marchand from France (ICJ Commissioner) and the Secretary-General.

The aims and objectives of the mission were:

- to enquire into the recent developments as they affected the Rule of Law, the respect for human and peoples' rights and the independence of the the judiciary and the legal profession of the country;
- to study and report on the constitutional and legal changes necessary for the transition to multi-party democracy;
- to recommend practical measures aimed at encouraging the emergence of a civil society that can serve as agents and protectors of democratic culture in Kenya;
- to recommend ways and means through which the international community may assist the people and government of Kenya to strengthen democratic institutions such as the Electoral Commission, parliament, the courts, the press and national NGOs.

The mission issued a statement setting out a number of findings and recommendations and called upon the government to take urgent action on a certain number of issues, *inter alia*, to end the ethnic violence that had plagued the country; to stop of the use of criminal process as a tool to muzzle the opposition; and to repeal the law denying parliamentary immunity to members of parliament.

The mission had found that the constitution and laws of the country had retained their one-party framework and that the principal policy-makers were still beholden to a one-party culture. Accordingly, one of the most important aspects of the ICJ's visit (and one of its most successful) was its involvement with respect to Kenya's constitutional review process. The mission recommended the immediate repeal of seven statutes it considered as incompatible with multi-party democracy and President Arap Moi, after personal

discussions with the ICJ Secretary-General, undertook to repeal five of them.

In calling for the opening up of Kenyan society, the ICJ stressed that the Attorney-General, Mr. Amos Wako had a decisive and major role to play in ensuring the revision of the constitution and the laws, as proposed by the ICJ.

The mission received wide coverage in the Kenyan national press and broadcast news. A well-attended press conference marked the end of the formal consultations.

The final report is expected to be issued shortly.

Mauritania and Senegal

The ICJ sent a mission to Mauritania and Senegal in July 1993, to gather information on the situation of refugees and displaced persons and to assess the state of affairs with respect to the border dispute that existed between the two North-West African States. The members of the mission were Mr. Nabil Bouaita, a jurist from Algeria, and Francois Ondo Nze, President of the Libreville Bar, Gabon.

The ICJ subsequently announced its great sorrow over the death of Mr. Bouaita in a car accident at few weeks after the completion of the mission.

Namibia

In December 1992, at the request of the UN Centre for Human Rights, the ICJ undertook a mission to evaluate UN human rights assistance to Namibia, including the establishment of a human rights documentation centre at the University of Namibia. The members of the ICJ mission were Ms Agnethe Olesen, the documentalist at the Danish Centre for Human Rights, and the ICJ Legal Officer for Africa.

South Africa

Throughout the period 1992 to 1994, the ICJ was deeply involved in the demise of *apartheid* and the return to democracy in South Africa. For information regarding the ICJ's pre-electoral mission to the country, see the section on Election Monitoring - above.

Mission to Investigate Labour Complaints

In February 1992, two ICJ Members, Justices Michael Kirby (Australia) and Rajsoomer Lallah (Mauritius) visited South Africa to look into labour complaints as part of the ILO fact-finding and conciliation commission, sent after the Congress of South African Trade Unions (COSATU) complained that laws on freedom of association did not conform to international standards. However, some of the major faults pointed out by COSATU had already been rectified through amendments to South Africa's Industrial Relations Act.

Mission to Investigate Violence in Natal and Transvaal

In March 1992, the ICJ conducted a mission in South Africa to investigate violence in Natal and Transvaal. The four-member team comprised John MacDonald, a British human rights lawyer; Christian Ahlund, a Swedish lawyer; Justice Enoch Dumbutshen of Zimbabwe, Vice-President of the ICJ; and the Secretary-General. The ICJ's Legal Officer for Africa acted as mission secretary.

In a statement issued on 29 March 1992, the members of the mission stated that "violence is the most pressing problem which South Africa faces ... it would not be possible to hold free and fair elections on a one-person, one-vote basis in the parts of South Africa we have visited. That is not just our view ... it is also the view of the vast majority of people we have spoken to right across the political spectrum."

The mission made a series of recommendations that included several related to the carrying of dangerous weapons, an issue that the team said the government had made a mistake in avoiding. A

previous ICJ mission to Natal in 1990 had in its report *Signposts to Peace* recommended that the carrying of all weapons, including cultural weapons, be banned at political meetings and rallies. However, the mission praised the government for its commitment to ending the violence.

The team also recommended that the government invite an international team to supervise the run-up to the elections as well as the election process itself.

The report of the mission, entitled *Agenda for Peace*, was issued in June 1992.

Statements

During the triennium, ICJ statements on situations of concern in the region included the following:

Burundi

October 1993: condemning the army-led *coup d'Etat*

Côte d'Ivoire

May 1992: expressing concern about threats to democracy

Djibouti

December 1992: expressing concern at threats against the life of the imprisoned former prime minister

Equatorial Guinea

December 1992: protesting against recent repression and the arrest and torture of Carmelo Mocong Onguene, a jurist with close links to the ICJ

Malawi

October 1992: (with the CIJL) calling for an investigation into the death of Orten Chirwa (imprisoned with his wife since 1981)

Mali

March 1992 and

September 1993: supporting Jean Zeigler in the case brought against him by Moussa Traoré and condemning fraudulent enrichment

April 1993

announcing publication of the report on the trial of Moussa Traoré

Nigeria

June 1993:

expressing concern at government interference in the democratic process. specifically regarding the presidential elections and calling on the OAU to send a clear message

Rwanda

April 1994:

appealing to the international community to live up to its responsibilities; urging a stronger UN presence in the country; calling for an immediate cease-fire; and appealing for the respect of all parties for the emblem of the Red Cross

May 1994:

outlining the ICJ intervention before the extra-ordinary session of the UN Commission (see the section on the United Nations and other international organizations - above)

South Africa

March 1992:

concerning the ICJ mission to investigate violence in Natal and Transvaal

June 1992:

announcing the publication of the report of the above mission

March 1994:

expressing grave concern about prospects of fair and free elections in light of the deaths that had occurred during an Inkatha election protest march; urging an investigation by the authorities; reiterating

its call for an international peace-keeping force of at least four battalions on polling day; and welcoming the proposal of the UN secretary-general regarding election observers.

Interventions

During the triennium, ICJ interventions with governments on issues of concern included the following:

Cameroon

November 1993: condemning the harassment of political opponents by the police

Chad

February 1992: condemning the assassination of the vice-President of the Chadian League for Human Rights

Equatorial Guinea

June 1994: expressing satisfaction at the granting of certain pardons and clemency

The Gambia

December 1993: supporting the rapid return to civilian rule, calling for a timetable for elections and expressing satisfaction with the release of detained persons

Nigeria

February 1992: expressing concern at the seizure of the passport of the national secretary of the Civil Liberties Organization

June 1992: expressing concern at the widespread arrests of Chad nationals

Senegal

March 1994: concerning the detention of two parliamentary leaders

Tanzania

September 1993:

expressing deep concern at serious human rights violations, particularly the harassment and persecution of political activists

General

During the triennium, ICJ staff also participated in and prepared substantive input for numerous meetings, training sessions, etc. concerned with the region, ranging from preparing a brief on the human rights situation in Africa submitted to the 28th OAU summit to meetings with the presidents of Benin, Mali and Togo; participating in an international conference on Rwanda, organized by the North-South Centre of the Council of Europe; lecturing at a UN training course on international human rights standards, aimed at Swaziland government officials; participating in a meeting organized by the Africa Leadership Forum on corruption, democracy and human rights; and taking part in a colloquium in Bloemfontein on the judicial application of international human rights norms organized by Interights (attended by the ICJ's vice-President, Executive Committee Chairman and one of its Members as well as the chairman of the CIJL Advisory Board).

Publications

The ICJ issued the following publications concerning the region during the triennium:

- *How to Address a Communication to the African Commission on Human and Peoples' Rights* (1992 - in Arabic, English and French);
- *Agenda for Peace: An Independent Survey of the Violence in South Africa* (1992 - in English);
- *Voting for Peace: An Independent Assessment of the Prospects for Free and Fair Elections in South Africa* (1993 - in English);

- *Observatoire international de la Démocratie à Madagascar: Second tour des présidentielles* (1993 - in French);
- *A Paralegal Trainer's Manual for Africa* (1994 - in English).

The ICJ Review published a review of the long-awaited book Human Rights in Africa by the Senegalese lawyer Kéba Mbaye (No. 51, December 1993) as well as an article entitled Towards the International Responsibility of the UN in Human Rights Violations during "Peace-Keeping" Operations: The Case of Somalia (No. 52, June 1994).

The Americas

As it has done over so many years, the ICJ continued its struggle against impunity, injustice and discrimination in the region, seeking specifically to improve the lot of disadvantaged and indigenous populations; strengthen the judicial systems of those countries that had returned to democracy; and foster the integration of international human rights norms into the national systems. A number of seminars and workshops, both regional and national, were held to that end. These included an important series of training courses aimed at underpinning advances towards democracy in various Latin American countries by strengthening their judicial systems and increasing the awareness of international human rights norms and their application at the domestic level.

Training Courses on International Protection of Human Rights and the Domestic Protection of International Human Rights Norms

In April 1992 in Lima (Peru), the ICJ, in collaboration with the Andean Commission of Jurists and with the support of the UN Centre for Human Rights, organized a regional training course on the international protection of human rights.

In the event, a coup by President Alberto Fujimori (in which he assumed all power and suspended the constitution) took place two days before the course began and the timespan for the course was, therefore, reduced to two days and the sessions were held in the participants hotel for security reasons.

Such events helped to underscore the need for such training courses in the region. A need that was particularly urgent for those involved in the administration of justice.

Because of the legacy of the past, many judges and lawyers still remained largely ill-acquainted with recent developments in international law and although their countries had ratified international texts much remained to be done both in adapting domestic law to evolving international law and training local judges and lawyers to apply and give real significance to international human rights norms within the national context.

Accordingly, during 1993 the ICJ organized a number of seminars in Latin American countries that had returned to democracy in order to help strengthen the judicial systems of those countries by increasing the awareness of international human rights norms and their application at the domestic level.

Courses took place in Uruguay (March 1993), Argentina (March 1993), Bolivia (November 1993) and Paraguay (November 1993).

Among the subjects that figured on the agenda of the training courses were: the relationship between international human rights law and the domestic legal system; the process of evolution of international human rights law in the framework of the Inter-American system; the juridical value of the emerging norms contained in treaties, covenants or conventions and those contained in the resolutions of organs such as the UN General Assembly, the UN Convention on Human Rights, the International Court of Justice, the Inter-American Commission and Court of Human Rights; the obligations of a State *vis-à-vis* the international human rights instruments it had ratified or adhered to; the harmonization of domestic law with international norms contained in treaties; the role of NGOs in this context; the compensation of victims of human rights violations or abuse of power and the fight against impunity.

All the courses were organized jointly with a national body: in Uruguay with the Uruguayan Bar Association; in Argentina with the Centre for Legal and Social Studies with the support of the Buenos Aires Association of Lawyers (the course was videotaped for use in provincial training courses); in Bolivia with the Andean Commission of Jurists; and in Paraguay with the Attorney-General's office (the ICJ also organized an additional course in Paraguay designed to provide information to the police and prison personnel on the rights of detained persons).

There was great interest in those and similar training courses in the region - on his return to power, President Aristide discussed with the ICJ the organization of training courses in human rights designed for judges. The ICJ offered its assistance in reviewing Haitian laws so as to render them compatible with international law and also in the promotion of judicial services in rural areas.

Indigenous Peoples

Workshops on Rights Protection

Bolivia

In view of 1993 being the International Year of Indigenous Peoples, the ICJ agreed with its local partners to hold a workshop in Oruro (Bolivia) to train indigenous peoples on how to better protect their rights at national and international levels.

The gathering was organized in collaboration with the Diocesan Centre for Social Care (a local NGO) and the Centre for Postgraduate Studies of the Technical University of Oruro in October 1993.

Various experts assisted the ICJ in providing models of action and appropriate orientation to facilitate the submission of cases by indigenous peoples to international organizations such as the OAS, the UN and the ILO. They also broached problems specific to the indigenous peoples of Bolivia and other Latin American countries.

Methods of empowerment of indigenous peoples and their access to the legal system were discussed at length.

Guatemala

In March/April 1992, the ICJ and the Guatemalan Commission on Human Rights with the aid of the Ministry for Development Cooperation of the Netherlands organized a workshop, in Guatemala City, for some 40 representatives from indigenous groups and communities on mechanisms for the protection of their rights.

General

In May 1994, the ICJ visited representatives of the National Indigenous Council in the indigenous region of Cauca in Colombia.

The ICJ also sent a fact-finding mission to the Mexican State of Chiapas concerning the insurrection of indigenous peoples there (see the section on Missions - below).

The Organization of American States (OAS)

During the triennium, the ICJ was represented at meetings of the OAS by the International Human Rights Law Group (IHRLG), a US affiliate of the ICJ.

The activities of the ICJ in that forum included the submission, in January 1993, jointly with six other NGOs, of a 55-page study analysing the draft Inter-American Convention on Forced Disappearances, to the working group of the Juridical and Political Commission of the OAS and a joint letter (along with the IHRLG) to the June 1994 OAS General Assembly voicing support for the draft (the OAS adopted the Convention and the text was published in ICJ Review No. 53 (December 1994)).

The ICJ also played an important and active role, along with other NGOs, in improving the draft Declaration of Managua for the Promotion of Democracy and Development, which was approved by the OAS at its June 1993 meeting.



Mexican troops were guilty of human rights violations in Chiapas

Mission

The ICJ sent a mission to the south-western Mexican State of Chiapas in February 1994, to gather information from different sources concerning the January 1994 insurrection of indigenous peoples there.

A substantial part of the ICJ report of the mission explained the context in which the conflict took place and its roots in extreme poverty and discrimination against the indigenous population (most notoriously through armed bands - "white guards" - kept by some proprietors and which are responsible for all kinds of abuses against the indigenous population).

The mission found that government troops had been guilty of serious violations of human rights that included summary executions of prisoners, some of whom had been wounded before their capture; arbitrary detention; torture and other forms of human rights abuse; and possible involuntary disappearances.

The ICJ welcomed the amnesty law as a peace mechanism provided those responsible for gross violations of human rights were brought to justice and did not benefit from impunity.

The mission was composed of the ICJ Legal Officer for Latin America and Eduardo Duhalde (Argentina). During their eight-day mission, they met officials of the federal Mexican government, members of the State authorities of Chiapas, representatives of local indigenous peoples and of human rights organizations, political and religious leaders as well as ordinary citizens. The full report of the mission was released in May 1994, in Spanish (a preliminary report had been issued in February).

Trial Observation

The ICJ sent an observer (Luis Edgar Morales Joya (Ecuador) to the trial of Khadar Khamide and Michel Shehadeh before the US Immigration and Naturalization Service Court in Los Angeles, that started on 27 October 1992.

The two Palestinians were threatened with expulsion, though permanent US residents and having committed no crime of their own, in response to the acts of an organization (the Popular Front for the Liberation of Palestine) that the government alleges they have supported through fund-raising. The issue was whether immigrants had the same right to benefit from civil liberties as US citizens.

Statements

During the triennium, ICJ statements on situations of concern in the region included the following:

Chile

November 1992 announcing the release of the report *Chile: A Time of Reckoning*

Colombia

August 1992 announcing the release of the ICJ report *Justice for Justice*, documenting 515 cases of violence against lawyers and judges

Guatemala

May 1993 strongly protesting the *coup d'Etat*; and calling on the UN and OAS to take urgent steps to allow a return to normality and the conclusion of peace negotiations

Haiti

September 1993 condemning numerous violations of Rule of Law and calling for international action regarding the return to democracy and the return to power of President Aristide

Peru

April 1992 condemning President Fujimori's *de facto coup d'Etat*

Interventions

During the triennium, ICJ interventions with governments on issues of concern, included the following:

Chile

March 1994

concerning the investigation of the murder of Carmelo Soria Espinoza, a dual Spanish-Chilean national, working for CE-PAL (UN) in Chile

Colombia

September 1993

expressing concern about the safety of Dr Barrios Mendivil, and March 1994 Chairman of Corporacion Colectivo de Abogados, an active NGO, who had acted as a lawyer in some politically sensitive cases and had received death threats

General

A vast amount of information was gathered by the ICJ concerning human rights abuses in the region. This was used both in preparing ICJ reports (see below) and as input for various human rights bodies at the international level.

Human Rights Award

At the beginning of 1993, the ICJ legal officer for the Americas delivered a speech at a ceremony organized by the UNDP and SIJADEP (a Paris-based organization that promotes democracy in Paraguay) to present a human rights award to Mrs. Carmen Casco de Lara Castro, for her 30 years of participation in the struggle for human rights. Mrs. Casco de Lara Castro is head of the Commission of Human Rights of Paraguay and a senator. She has been communicating with the ICJ for more than 20 years. The Secretary-General sent a message that was read out during the ceremony.

ICJ's First Amicus Curiae Brief

In July 1992, the ICJ filed its first *amicus curiae* brief with the Inter-American Court of Human Rights (*Aloeboetoe et al v. Suriname*). The case involved the massacre of seven men of the Saramacan tribe by Suriname authorities on 31 December 1987, in which it is argued that, under the American Convention, an award of damages should include compensation for moral damage sustained not only by the families of the victims but by the Saramacan tribe as a whole.

Publications

The ICJ issued the following publications concerning the region during the triennium:

- Guatemala: *Taller de capacitación para miembros de grupos y comunidades indígenas* (1992 - in Spanish);
- *Justice for Justice: Violence against Judges and Lawyers in Colombia* (1992 - in English and Spanish) (the research for this publication was carried out by the Andean Commission of Jurists, an ICJ affiliate);
- *Chile: A Time of Reckoning* (1992 - in English);
- Mexico: *Rebellion Indígena en Chiapas* (1994 - in Spanish).

Articles were published in the ICJ Review on the Coup d'Etat in Peru and on Human Rights Developments at the OAS General Assembly (No. 48, June 1992); on Uruguay: *Amnesty Law in Violation of Human Rights Convention* (No. 49, December 1992); on Bolivia and on The 1992 OAS General Assembly in Nicaragua (No. 51, December 1993); on Bolivia, on Mexico, and on *Aloeboetoe et al. vs. Republic of Suriname: A judgment of the Inter-American Court of Human Rights* (No. 52, June 1994); and on *Two Examples of Battling Impunity in Chile*, and on *Human Rights and their Treatment in the 1994 General Assembly and Permanent Council of the OAS*, as well as the basic texts of the Inter-American conventions on forced disappearances of persons and on the eradication of violence against women (No. 53, December 1994).

Asia and the Pacific

Highlights of the ICJ's many endeavours in this vast and varied region include seminars geared to the protection of the rights of women and children; missions to Japan seeking to achieve justice for the so-called "comfort women," and to protect the rights of marginalized groups such as psychiatric patients, and those held in detention outside regular prisons and detention centres; and a substantial and sustained effort to publicize human rights abuses in East Timor, specifically in connection with the massacre in Dili.

During the triennium the ICJ organized six missions to the region (Jammu and Kashmir, Japan (3), Sri Lanka, and Thailand) and sent four observers to trials (East Timor, Philippines/US (2); and Thailand).

Seminars and Training Programmes

Training Programme for Workers in Children's Organizations

A regional training programme for persons working in children's organizations in Asia, organized by the ICJ in collaboration with AGHS Law Associates (Lahore), was held in Lahore, Pakistan from in September 1993.

It was referred to in the press as the "rights of the child workshop" and focused on the question of how to protect children in Asia from abuses such as child labour, imprisonment without trial (usually accompanied by sexual harassment) and illegal trafficking.

The objectives of the training programme were to provide a forum for an exchange of experiences on those issues in different Asian countries and on the work undertaken in developing human rights education material for children as well as to discuss international mechanisms for the protection of children's rights including the Convention on the Rights of the Child.



The ICJ held a training programme for persons working in children's organisations in Lahore, Pakistan, in September 1995.

At the end of the meeting participants made several recommendations, *inter alia*:

- that Asian countries take measures to enhance public awareness of the need to eradicate child labour and protect the rights of children;
- that all States that have not done so ratify, without reservations, the Convention on the Rights of the Child;
- that improved patterns of information flow be established and that a two-way flow between national and international children's NGOs be built up; and
- that UNICEF develop a world-wide directory of funding sources for organizations dealing with children and children's rights in Asia.

Some 40 NGO representatives from 16 Asian States attended the training programme along with representatives of regional and international organizations (*inter alia*, UNESCO, UNICEF, the ILO, and the UN Committee on the Rights of the Child).

Seminar on Women and the Law in the Pacific

The ICJ held a major seminar on the above issue in Fiji in April 1994 (see the section on Women's Rights - above).

Indonesia - National Seminar on Paralegal Training

A national paralegal training seminar, organized by the ICJ in collaboration with the Indonesian Legal Aid Foundation, was held in November 1992. It was attended by 48 participants from different parts of Indonesia and focused on the development of the curriculum and preparation of handbooks for paralegal training for different disadvantaged groups.

Nepal - National Seminar on Legal Education

In December 1992, 300 law teachers from all over Nepal attended a national seminar on legal education in Nepal, organized by the ICJ in collaboration with its Nepal national section.

Missions

Hong Kong

In April 1992, the ICJ published the report of a mission to Hong Kong carried out in June 1991. The report - *Countdown to 1997* - concluded that the British government had shown a disturbing lack of concern for the human rights of Hong Kong citizens when it negotiated the agreement with China.

It stated, *inter alia*, that, in principle, the British government had a obligation to provide a right of abode in the United Kingdom or in an acceptable third country to British dependent territory citizens who wished to leave Hong Kong. It also criticised the British government for not objecting to the unsatisfactory provisions of the Basic Law, which was promulgated by China in 1990 and which will become the constitution of Hong Kong after 1997.

On 12 May 1992, the ICJ issued a press release noting that the ICJ, through its Executive Committee, had "responded sharply" to comments made by British Foreign Secretary, Mr. Douglas Hurd on the ICJ report. It had been reported that Mr. Hurd's remarks were intended as a rebuttal of some of the charges" in the ICJ report).

The ICJ Executive Committee had unanimously endorsed the report and its chairman, Justice Michael Kirby, President of the Court of Appeal of New South Wales, Australia, said, "[t]he British record in decolonization this century is in many respects admirable. But in relation to Hong Kong it is shabby in the extreme. The ICJ report shows this in plain terms. It was about time someone said it bluntly. Britain is handing over five million British subjects without asking what they want for their future. That is totally unacceptable by international law."

India/Pakistan

In August 1993, the ICJ conducted a fact-finding mission to Jammu and Kashmir (India and Pakistan). The members of the mission were Dr Dalmo de Abreu Dallari (Brazil), member of the ICJ Executive Committee; Sir William Goodhart (United Kingdom), ICJ Member; Florence Butegwa (Zimbabwe); and Viti Muntarbhorn (Thailand).

The ICJ was the first international human rights organization to have been authorized by the Indian government to send a mission to Kashmir. The members of the mission visited Delhi, Srinagar, Jammu, Islamabad and Muzaffarabad and met with ministers, civil servants, politicians, members of human rights organizations, journalists and lawyers as well as visiting camps for displaced persons.

At the 1994 session of the UN Commission on Human Rights the ICJ thanked the governments of India and Pakistan for authorizing the ICJ mission's visit to Jammu and Kashmir. The issue of Kashmir provoked fierce exchanges between the two governments throughout the session, with Pakistan referring to the ICJ report, although it had not yet been published at that time.

In June 1994, the ICJ issued a statement deploring the Pakistan government's attempt to influence the result of the ICJ report of its mission's visit to Kashmir (and Jammu). Apparently acting upon instructions, representatives of the government approached ICJ Members in various capitals in Africa, Asia, Europe and North America. The release stated that the officials "sought to exert political pressure on the ICJ's professional work in favour of one of the parties involved. This type of pressure is unprecedented in the history of the ICJ."

The ICJ also deplored that selected passages from an advance draft of the report that had been sent in confidence to the two governments concerned had been leaked to the press. Some press reports stated that a high-level Indian delegation was in Geneva to "browbeat the ICJ to change the report."

The report was issued in March 1995.

Japan

'Comfort Women'

In April/May 1993 the ICJ sent a mission to Japan to investigate the issue of the so-called "comfort women" (see the section on Women's Rights - above).

Rights of Psychiatric Patients

In April 1992, the ICJ sent a four-member mission to Japan to examine the human rights of psychiatric patients in that country. The ICJ team comprised former Secretary-General, Niall MacDermot; Professor T. W. Harding (Switzerland); Professor Harold Visotsky (USA); and Pamel Cohen, an American lawyer conducting research in Tokyo.

Their report noted that Japanese legislation and practice did not respect some UN principles for the protection of mentally ill persons and for the improvement of mental health care.

It also stated that there was a "serious lack of resources, arising from the discriminatory nature of reimbursement of mental health care and welfare payments for the mentally ill as compared to other ill and disabled people." It was imperative that municipal and prefectural governments be required to subsidize community-based services and facilities.

Among the recommendations were:

- abolishing the "*hogogimusha*" system that requires family members to assist in the treatment and protection of patients;
- coordination of services at all levels of government;
- improving training, oriented towards community care and rehabilitation;
- restructuring psychiatric review boards and their methods of operation; and

- establishing a procedure to set and enforce national standards.

The ICJ issued a statement on 22 July 1992, outlining the report of the mission and urging Japan to revise its 1988 Mental Health Law in order to better protect the human rights of psychiatric patients.

The ICJ had conducted a similar mission to Japan in May 1985.

Daiyo-Kangoku System of Police Custody

In September 1994, the ICJ appointed Mr. Nicholas Cowdery QC, an Australian lawyer, to participate in a mission to Japan to study the *Daiyo-kangoku* system of police custody. The mission was conducted jointly with the International Bar Association and LAWASIA.

Daiyo-kangoku means "substitute prison" and refers to a supposedly temporary arrangement set up in 1908 that provides for the detention of persons outside regular prisons and detention centres. The system had been the subject of serious domestic and international concern and controversy for decades and attention had been drawn to it by individual complaints of mistreatment in its facilities.

Sri Lanka

In 1992, the ICJ mandated Dr Stephen Neff to conduct a mission to Sri Lanka to observe the functioning of the Presidential Commission of Inquiry in Respect of NGOs. Dr Neff had conducted a previous mission in 1991 to gather information on the activities of the Commission.

Thailand

In May 1992, the ICJ sent a two-man mission to Thailand to investigate human rights abuses and the military's massacre of pro-democracy demonstrators.

The observers - lawyers Param Kumaraswamy (Malaysia) and David Hallmark (England) - met with General Suchinda Kraprayoon several hours before he resigned as non-elected Prime Minister. They received statements from the commanders of troops that had cleared the site of demonstrators and had meetings with other military and police officials, opposition leaders, pro-democracy activists (many of whom had received death threats) and members of NGOs.

Trial Observation

Indonesia and East Timor

The Massacres in Dili

At the 1992 session of the UN Commission on Human Rights, the ICJ presented a report entitled *Blaming the Victims: The 12 November 1991 Massacre in Dili, East Timor and the Response of the Indonesian Government*. For its report the ICJ had interviewed eyewitnesses in Australia, Great Britain, the Netherlands and the United States, all of whom stated that the demonstration had been peaceful and controlled until, without warning, Indonesian security forces opened fire on the crowd, killing between 100 and 200 people.

The ICJ report cited numerous flaws in the Commission of Inquiry set up by the government to investigate the incident and criticized the government for failing to take action against those responsible for the killings. It stated that "while no military officer has yet been tried, dozens of Timorese who participated in the demonstration remain in detention."

Subsequently, in March 1992, the ICJ sent an observer, Rodney Lewis, an Australian lawyer, to the trials, in Dili, East Timor, of two men, Francisco Branco and Gregorio Salkanha, accused of subversion following the fatal 12 November demonstration. Subversion carries a maximum penalty of death and the observer noted that "the persons charged with the most serious offenses ... and those facing the death penalty are the ones who organized the

demonstration, while those who did the actual shooting of unarmed people have not yet been charged with any homicide related crimes."

Mr. Lewis recommended sending international observers to the trials of associates of the two accused as well as continued monitoring of their trials.

This the ICJ did, sending observers to monitor trials in Dili, East Timor and Jakarta, Indonesia of 13 Timorese accused by the government of charges ranging from spreading hatred to subversion.

In a report (much of which had been prepared by Mr. Lewis) issued by the ICJ in August 1992 - *Tragedy in East Timor: Report on the trials in Dili and Jakarta* - the Indonesian government was said to have "turned justice on its head." Indonesian troops involved in homicide and serious assault got maximum sentences of 18 months while unarmed Timorese involved in a peaceful demonstration received sentences ranging from five years to life imprisonment under subversion or "hate-sowing" laws. The report stated that the very existence of those laws "represents a serious violation of basic human rights."

Among its recommendations were that a new commission of inquiry be set up and that the Anti-Subversion Law be repealed.

Trial of Xanana Gusmao

In November 1992, the ICJ expressed its concern to the Indonesian government over the arrest of Xanana Gusmao, the alleged leader of the resistance forces in East Timor.

In February 1993, the ICJ sent an observer, Fredun De Vitre, an Indian lawyer, to the trial of Mr. Gusmao in Dili, East Timor. He was in Dili from 29 February to 5 March but was able to attend the trial only on 4 March, the only day on which the court convened during his stay.

The observer was able to meet and interview many people but not the accused, the prosecutors or military intelligence officers.

On 21 March, Mr. Gusmao was sentenced to life imprisonment on charges of rebellion and illegal possession of firearms.

In his *Report on the Trial of Xanana Gusmao in Dili, East Timor*, the observer stated that the trial violated the accused's rights, was not in conformity with international standards of fair trial procedure and even went so far as to breach the safeguards provided under the Indonesian code of criminal procedure. However, the fact that the Anti-Subversion Law was not invoked against the accused was an encouraging feature of the trial.

The report included several recommendations and stated that the refusal of the court to allow the defendant to read his defence statement was one of the most serious violations of the accused's rights and contravened internationally accepted fair trial procedures.

Mr. Gusmao's sentence was subsequently reduced to 20 years in prison by the Indonesian President.

At the 1993 session of the UN Sub-Commission, the ICJ made an intervention concerning human rights violations in East Timor and, specifically the trial of Xanana Gusmao. It drew attention to the report of the trial issued in August, in which the ICJ concluded that in several respects the trial process violated the accused's rights, was not in conformity with international standards of fair trial procedure and even breached the Indonesian Code of Criminal Procedure.

Philippines

Trial of Antonio Ayo and Santiago Cenety

The ICJ sent an observer, Sven Beling, a former judge of the Stockholm Court of Appeal, to the subversion trial, in March 1992, of two lawyers, Antonio Ayo, Jr. and Santiago Cenety, members of the Free Legal Assistance Group.

The case against the two lawyers was dismissed in September 1992.

Class Action Against Former President Ferdinand Marcos

The ICJ sent an observer, David Matas, a Canadian lawyer and member of its Canadian national section, to the trial resulting from the case filed by 34 individuals and 10,000 class action plaintiffs (alleging human rights violations including torture, arbitrary detention, disappearances and extrajudicial execution) against former Philippines President Ferdinand Marcos.

In September 1992, a jury at the US District Court in Hawaii, found that the former President was linked to human rights abuses committed during his regime and that victims were entitled to compensation. The case set a number of precedents:

- for the first time a class action had been used as a remedy for international human rights violations;
- it was the first alien torts case involving a former head of State;
- for the first time in victim compensation litigation a restraining order was served against Swiss banks to prevent them from transferring assets.

The ICJ issued a statement on 5 October 1992 noting the new legal ground broken in the winning of the civil suit brought by victims of human rights violations.

Thailand

The ICJ sent an observer, Mr. Lim Hong Niam, a Malaysian lawyer to the trial in Bangkok, in August 1993, of Professor Sulak Sivaraksa, a prominent human rights campaigner, Buddhist scholar and Nobel Prize nominee.

Professor Sulak was charged with insulting the monarchy (a charge that carries a maximum sentence of 15 years imprisonment) and defaming the military (maximum sentence of two years).

The ICJ observer met with the defendant and three of his lawyers and reported that all the hearings had been open to the public and that the national press had made its presence felt.

The trial was ongoing as of December 1994 and the observer continued to attend whenever possible.

Statements

During the triennium, ICJ statements on situations of concern in the region included the following:

Hong Kong

April 1992:

announcing publication of report of 1991 mission - *Countdown to 1997*

May 1992:

responding to critical British government comments on the above report

India

April 1992:

deploring the arrest of retired judge Ajit Bains and requesting his immediate release

Myanmar

March 1992:

welcoming the nomination of a UN special rapporteur to examine the human rights situation and progress made regarding the transfer of power to a civilian government and the drafting of a new constitution

Pakistan

June 1994:

deploring the government's attempt to influence the result of the ICJ report of its mission to (Jammu and Kashmir)

Philippines

October 1992:

noting the new legal ground broken in the winning of the civil suit brought by victims of human rights violations against former President Ferdinand Marcos

Thailand

- June 1992: expressing concern over death threats received by leaders of Thailand's Confederation for Democracy
- September 1992: urging the interim government to revoke the executive decree changing the composition of the Judicial Commission that appoints judges, thereby eroding judicial independence

Tibet

- February 1992: noting the forthcoming UN Commission vote on the draft resolution (by the EC) expressing concern at human rights violations by China

Interventions

During the triennium, ICJ interventions with governments on issues of concern included the following:

Bangladesh

- November 1993: expressing concern over violence against indigenous (Jumma) peoples by the army and requesting permission to observe the committee of enquiry

Indonesia and East Timor

- February 1993: expressing concern over the arrest of Xanana Gusmao, the alleged leader of the East Timor resistance forces

India

- April 1992: requesting the immediate release of arrested retired judge Ajit Bains
- December 1992: expressing concern at the deteriorating human rights situation in Ayodhya and urging prompt action

Malaysia

end 1994:

voicing concern regarding measures taken against the religious movement Al Arqam, including the arrest of its founder and in violation of extradition procedures regarding his return from Thailand

Singapore

October 1994:

expressing concern over the questioning of an American author regarding an article on Singapore he wrote in the international press

General

Tibet

During a speech he gave at a luncheon organized by the ICJ's Australian Section on 11 May 1992, in Sydney, His Holiness the Dalai Lama expressed appreciation for the ICJ's work in defending the rights of Tibetans, particularly their right to self-determination. Referring to the ICJ's report of 1959 concerning the Chinese occupation of Tibet, he said that the ICJ was one of the first international organizations to draw world attention to the tragedy of the Tibetan people.

Publications

The ICJ issued the following publications concerning the region during the triennium:

- *Countdown to 1997: Report of a Mission to Hong Kong* (1992 - in English);
- *Refuges from Myanmar: A Study by the ICJ* (1992 - in English);

- *Blaming the Victims: The 12 November 1991 Massacre in Dili, East Timor and the Response of the Indonesian Government* (1992 - in English);
- *Tragedy in East Timor: Report on the Trials in Dili and Jakarta* (1992 - in English);
- *Report on the Trial of Xanana Gusmao in Dili, East Timor* (1993 - in English);
- *Comfort Women: An unfinished ordeal* (1994 - in English).

Articles appeared in the ICJ Review on India, and on *Protection and Promotion of Fundamental Rights by Public Interest Litigation in India* (No. 51, December 1993); on *Resettlement or Repatriation: Screened-Out Vietnamese Child Asylum-Seekers* and on the Convention on the Rights of the Child (No. 52, June 1994); and on *The Judgment of India's Supreme Court on the Constitutional Validity of the TADA Acts* (No. 53, December 1994).

Europe

During the triennium, the ICJ had no legal officer for Europe. Nevertheless, activities took place over the three years in question at both the regional and national levels.

The situation in the former Yugoslavia was a major issue for the ICJ (linking into its campaign for an international criminal court); the subject of minorities steadily grew in importance over the triennium, particularly concerning Central and Eastern Europe; and work was begun on lobbying for a single European Court of Human Rights.

Observers were sent to three trials: in Denmark; Germany; and Turkey.

Publications included a Position Paper on the *Accession of the European Communities to the European Convention on Human Rights* as well as articles in the ICJ Review on the *Establishment of an*

Independent Judiciary in the States of the former USSR - The Case of Moldova (No. 51, December 1993); and on *Rethinking Bosnia and Herzegovina's Right of Self Defence: A Comment* (No. 53, December 1994), as well as in the ICJ Newsletter on *New Perspectives for Legal Reform in the Former USSR* (No.59/1994); and an article in the ICJ Newsletter on *New Perspectives for Legal Reform in the former USSR* (N°. 59, October 1994).

Council of Europe

Minorities

Two ICJ observers, Jeroen Schokkenbroek and Frank Steketee of the ICJ's Netherlands national section, attended the meeting of the Council of Europe's Steering Committee for Human Rights in January 1992 to discuss possible measures for protecting the rights of national minorities.

A working party was set up to prepare a draft resolution and it was stressed that the issue of minorities was becoming increasingly urgent, particularly in Central and Eastern Europe.

A Single European Court of Human Rights

At the beginning of 1993, the Secretary-General reiterated the importance the ICJ attached to the issue of the reform of the supervisory mechanism of the European Convention of Human Rights and Fundamental Freedoms - more specifically, the creation of a single European Court of Human Rights.

The ICJ voiced its views on that matter in its capacity as observer to the Steering Committee for Human Rights of the Council of Europe. The ICJ made clear that it favoured the single court option over that of retaining a two-tier structure for reasons of speed and simplicity.

Central and Eastern Europe

Members of the ICJ staff attended two meetings (in October and December 1993) organized by the Council of Europe to discuss programmes related to democratic institution-building in Central and Eastern Europe.

Trial Observations

Denmark

In November 1994, at the request of the International Criminal Tribunal for the Former Yugoslavia, the ICJ appointed Allan Heyman, an English barrister, as its observer at the trial of Refic Saric before the Danish Court in Copenhagen.

Germany

In July 1992, the ICJ sent an observer, Richard Soyer (Austria) to the trial of six defendants accused of killing Amadeu Antonia of Angola during an attack on Africans in November 1990 in Eberswalde-Finow, Germany.

Mr. Soyer said that police had seen the attack but had not intervened. The defendants were given sentences ranging from three to four years imprisonment.

Turkey

The ICJ appointed Peter Balscheit, President of the Regional Court of Sissach, Switzerland, to observe the trial of Fevzi Argun and Yavus Önen before the Ankara State Security Court, starting on 19 December 1994.

General

Conference on Population Transfer

The ICJ and Justice Michael Kirby, the chairman of its Executive Committee participated in an international conference on the human rights dimension of population transfer in Tallinn, Estonia in January 1992. The conference had been organized by the newly formed Unrepresented Nations and Peoples' Organization.

Moldova Conference on Judicial Reform

Justice Michael Kirby, chairman of the ICJ's Executive Committee, represented the ICJ/CIJL at a conference of experts on judicial reform and reform of the law, held in Chisinau Moldova in early 1993.

The aim of the conference was to secure assistance in the design of judicial and legal institutions, the sudden collapse of the former USSR having presented acute constitutional problems for the successor States, such as an absence of a tradition of an independent legal profession and judiciary.

Justice Kirby offered the help and support of the ICJ/CIJL for colleagues in Moldova and other former Republics of the ex-USSR.

Romania - Pogrom Against the Rom Community

In October 1993, the ICJ sent a letter to the President of Romania, Ion Iliescu, expressing concern at news of a pogrom against the Rom community carried out on 21 September 1993 in the village of Hadareni in the department of Tirgu Mures, which was seemingly triggered off by a brawl between two Romanians and two Roms.

It was alleged that the municipal authorities remained passive throughout. According to information, the government had not condemned the events but had highlighted the Roms "refusal to

integrate socially." The ICJ feared that such a reaction might encourage similar acts in the future and called on the government to establish an independent and impartial investigation of the events and bring the perpetrators to justice.

The Former Yugoslavia

The first exceptional session in the history of the Commission on Human Rights took place in 1992 to discuss the massive and deliberate violations occurring in the former Yugoslavia (see section on the United Nations and other international organizations - above).

The Middle East and North Africa

In 1992, the ICJ created a post for a legal officer for the Middle East and North Africa (the post is currently held by the director of the CIJL) and during the triennium this new regional area showed an ever-increasing spread and depth of activities. Chief among them were close monitoring of the situation in the Occupied Territories and in the new Palestinian Autonomous Areas (including fact-finding missions, studies and successful lobbying for a special rapporteur on the Occupied Territories); an important study on the Rule of Law in Iraq; a sustained approach to countering human rights abuses in Tunisia; two missions to the area of the Occupied Territories; and the sending of observers to two trials (Egypt and Tunisia).

Workshop on Strategies for Improvements in the Arab Human Rights Movement

In January 1994, some 31 Arab human rights activists and experts participated in a workshop in Amman, Jordan, organized by the ICJ under the auspices of Crown Prince Hassan Ben Talal, and designed to promote professionalism, independence and effectiveness in the Arab human rights movement. Consensus emerged on the need to bolster a culture of professionalism within NGOs active in the Middle East and North Africa.

Discussions were held on how to elaborate short-term and long-term strategies, gather and disseminate information, conduct legal research and produce publications. Case studies of efficient Arab NGOs were presented and discussed.

A number of general recommendations were made and the relationship between NGOs and political parties was explored - the aim of creating an independent, professional and effective Arab human rights movement having been long since marred by the existence of many kinds of governmental pressure on the local NGO scene.

Consensus was reached that it was incumbent upon NGOs to create a human rights culture in the respective societies, and co-operation and solidarity among Arab NGOs was considered as the backbone for the reinforcement of their effectiveness.

The workshop recommended the establishment of an Arab funding institution to help NGOs that would be under the supervision of independent human rights experts who would be both credible and apolitical. It also urged governments to legalize NGOs and allow human rights workers to conduct their activities free from harassment; to release human rights activists who were detained in the Arab world; and to create permanent and active committees for human rights.

Participants came from Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Palestine, Syria, Tunisia and Yemen. Arab human rights experts based in France, the United Kingdom and the United States also joined the workshop.

Seminar on Judicial Independence and Functions in Tunisia

See the section on the CIJL - below.

Missions

West Bank and Gaza - Status of the Palestinian Civil Courts

Convinced that for normal life to resume in the West Bank and Gaza there was a need for a strong, confident and competent judiciary, the ICJ and the CIJL decided to study the present and future status of the Palestinian civil court and to that end undertook a mission to those areas in December 1993.

The mission comprised Justice P. N. Bhagwati, Chairman of the CIJL Advisory Board; Mr. Michael Ellman, an English lawyer and member of Justice, the ICJ's British national section; Mr. Paul Gomez, a French judge and member of Libre Justice, the ICJ's French national section; Mr. Fali Nariman, President of the Bar Association of India and Member of the ICJ Executive Committee; the Secretary-General; and the Director of the CIJL. Its goals were:

- to review the status of the civilian courts;
- to identify the problem areas inconsistent with the proper working of a judicial system under the Rule of Law;
- to make constructive criticism and offer recommendations aimed at making the civil nucleus for a proper civil judiciary under a Palestinian self-governing authority; and
- to acquaint itself with the current human rights situation in the Occupied Territories.

The members of the mission met with Palestinian lawyers, judges and human rights activists as well as with Israeli and Palestinian political leaders, and visited five courts in the West Bank and Gaza. They also had meetings with Israeli lawyers and human rights groups and had discussions with the President of the Israeli Supreme Court.

The mission was followed by a seminar entitled *Towards an Independent Palestinian Judiciary*, organized by the ICJ/CIJL in collaboration with *al-Haq*, the ICJ's West Bank affiliate.

The main aim of the seminar was to share the mission's findings and conclusions with Palestinian jurists in order to enhance their knowledge of the role and functioning of an independent judiciary.

The ICJ/CIJL published a statement on 22 December 1993 announcing the completion of the mission and setting out the 26 recommendations made by the mission.

The mission found that the effectiveness of the civilian courts had been undermined by a number of factors, *inter alia*, the transferring of jurisdiction in administrative matters from the civilian courts at the discretion of the military justice system; military interference in the appointment and supervision of judges; the removal of cases from the civilian courts; the placing of a number of impediments upon the legal profession; prohibitive court fees; the non-existence of a supreme court or any appeal court other than a military one, and the non-existence of independent Palestinian bar associations in either the West Bank or Gaza.

The ICJ mission welcomed the imminence of Palestinian self-rule but stressed the need for the Palestinian autonomous authorities to ensure the future of the fledgling Palestinian legal infrastructure through, *inter alia*, respect for human rights and the principles of the Rule of Law; the separation of powers and the establishing of a Palestinian supreme court; and the encouraging of Palestinian legal competence through enhanced study programmes.

In June 1994, the report of the mission *The Civilian Judicial System in the West Bank and Gaza: Present and Future* (available in Arabic, English and French) was published and a press conference held at ICJ headquarters.

Israel and the Occupied Territories - Commission of Inquiry into the Hebron Massacre

The ICJ sent a mission to Israel and the Occupied Territories in March 1994 to attend the first session of the Israeli government's Commission of Inquiry into the Hebron massacre; collect information on the massacre and its aftermath; consider the effectiveness of fact-finding and human rights monitoring under the

prevailing circumstances; and assess the various inquiry efforts that are taking or will take place; and formulate recommendations for possible ICJ involvement. The mission was composed of Sir William Goodhart, an English advocate and ICJ Member, and Mr. Peter Wilborn, a member of the ICJ Secretariat in Geneva.

The ICJ published a report of the mission - *The Hebron Massacre and Aftermath* in Arabic and English. The report stated that the massacre could not be separated from the context of violence by Israeli settlers in the Occupied Territories and, *inter alia*, it called upon the Commission of Inquiry to investigate and report on the arming of settlers, and the apparent inaction of Israeli forces, police and the courts in the face of settler violence.

The mission reported the arrest and detention of Mr. Sha'wan Jabrin, a staff member of *al-Haq*, an ICJ affiliate. His interrogation apparently focused primarily on his involvement in the writing of an *al-Haq* publication on settler violence in the Hebron area during 1993. The mission called for his urgent release, in the absence of any charges being made against him.

Trial Observations

Algeria

The ICJ requested permission for a two-man team to observe the trial of leaders of the Islamic Salvation Front (FIS) that was scheduled to begin on 26 June 1992 before the Military Tribunal in Blida. However, permission was denied.

At the trial, according to defence lawyers, retroactive legislation had been used to justify taking legal action against the leaders (although the FIS was a recognized political party) and the accused and their lawyers had been denied access to the indictment sheet and other relevant documents in the prosecution file.

The ICJ issued a press release expressing its concerns regarding the trial and also noting two major flaws in the proceedings: the trial took place before a military tribunal rather than an ordinary court

and it was conducted behind closed doors, contrary to both Algerian and international law.

In statement, the ICJ stated that "the fairness of a judicial procedure is a basic right, not a luxury. Although we object to any form of fundamentalism, we firmly uphold every person's rights to fair proceedings."

Egypt

In March 1993, Dr Anis Kassim (Jordan) went to Cairo on behalf of the ICJ, to attend the trial of 43 Egyptian citizens accused of being members of an illegal Islamic organization and of committing attacks on tourist targets.

Dr Kassim, along with Mr. Mohammed Munib of the ICJ's Egyptian national section, were both turned away from the military court that had been assigned the case (this was the first time civilians had been brought before a military court). Later the defence successfully denounced the referral of the case to the military jurisdiction as a violation of the Constitution but the government appealed against that ruling.

The ICJ wrote to the President of Egypt in May 1993 in relation to the case and stressing that, in combating violence, the State should uphold the Rule of Law and the independence of the judiciary, as well as respect for human rights.

An additional cause for concern for the ICJ was that, although two of the defendants were minors, they were subjected to the same prison conditions as the others.

Palestinian Occupied Territories

In July 1992, the ICJ sent an observer - Asma Khader, ICJ Executive Committee member - to the trial of more than 100 members of the al-Nahda Islamic group, accused of planning a coup and attempted assassination.

ICJ Affiliates

Tunisia - Threats Against the Independence of the ICJ's Affiliate

In March 1992, the Chamber of Deputies adopted amendments to the law on associations that would have affected the structure and membership of all existing associations. During a visit to Tunisia, the ICJ Secretary-General met with the Minister of Justice and expressed concern about the amendments. The ICJ's affiliate, the Tunisian League for the Defence of Human Rights (TLDH) reported later that because of initiatives taken by high-level officials, a positive outcome seemed likely.

However, that was not the case and the ICJ again intervened with the Tunisian authorities in June 1992 after the above amendments had been approved. Although the government had given assurances that negotiations were continuing, the result was that the TLDH had to be considered dissolved as from 13 June 1992.

The Secretary-General and the director of the CIJL met with the Tunisian President, Zine El-Abidine Ben Ali, on 28 September 1992 for a meeting that was to focus on the Rule of Law in Tunisia. They made use of the occasion to bring up the situation of the TLDH and after the meeting the President agreed to allow the TLDH to have access to its headquarters. On 29 September, the ICJ/CIJL issued a press release welcoming the openness and objectivity that characterized their talks with the President and expressing gratitude that the President acceded to their request to allow the TLDH access to its premises to prepare for its extraordinary congress.

On 10 February 1993, the ICJ again intervened, through the Tunisian Ambassador in Geneva, on behalf of the TLDH - specifically on behalf of Mr. Taher Shagroush, an Algerian national and member of the Board of Directors of the TLDH who was threatened with expulsion. Following the ICJ intervention, the President ordered the cancellation of the order.

Egypt

The ICJ sponsored members of its Egyptian affiliate, the Egyptian Organization for Human Rights (EOHR) to attend meetings of the UN Commission on Human Rights and of the UN Committee against Torture.

The representatives of the EOHR took the opportunity to talk to the UN special rapporteur on torture and to provide a very full and well-presented response to the Egyptian government's report to the Committee against Torture. The EOHR also provided a response to the government's report to the Human Rights Committee in 1993.

Palestinian Autonomous Areas

The ICJ helped two of its affiliates, *al-Haq* and the Gaza Centre for Rights and Law, to become familiar with the practical side of using international machinery for the protection of human rights during the visits of representatives of the two bodies to Geneva to participate in meetings of the UN Commission on Human Rights.

Statements

During the triennium, ICJ statements on situations of concern in the region included the following:

Algeria

June 1994:

condemning the assassination of the President of the Algerian League for Human Rights and calling for government action

Israel

April 1994::

condemning two attacks against Israeli citizens

Jordan

January 1992

expressing satisfaction at the commutation of the death sentences passed in the so-called Mouhammad's Army case (the ICJ

had previously appealed for such a commutation and a retrial)

Lebanon

February 1994: condemning the massacre of worshippers in a north Beirut church in a bomb attack

Morocco

January 1992: expressing concern about allegations of torture at Okacha prison

Palestinian Occupied Territories

June 1992: on the 25th anniversary of Israeli occupation, *inter alia*, calling for Israeli withdrawal; expressing concern over measures that violate provisions of Fourth Geneva Convention; and regretting banning of Palestinians from Israel (cited as an example of policy of collective punishment)

December 1992: announcing an ICJ intervention to the Security Council regarding Israeli deportations of Palestinians to Lebanon

July 1993: stating that Israeli raids on south Lebanon were in contravention of principles of international law and calling for Security Council action

February 1994: deploring the massacre of Palestinians in Hebron by an Israeli settler; expressing alarm over the possible consequences; and urging the military authorities to exercise maximum restraint

Palestinian Autonomous Areas

November 1994: condemning the shooting of demonstrators by Palestinian police

Syria

April 1992: welcoming the release of Yousef al-Burji and requesting the release of former

President Nour al-Din al-Atassi (both detained since 1970)

Tunisia

September 1992:

welcoming open and objective talks with the President and gratitude for his allowing the Tunisian League for the Defence of Human Rights access to its premises

Interventions

During the triennium, ICJ interventions with governments on issues of concern, included the following:

Bahrain

January 1992:

concerning the arrest of Abdul Larif Al Mahmood, a religious leader and lecturer at Bahrain University

April 1992:

concerning the expulsion of a Bahraini citizen to Syria and asking for legal basis for such a measure

Egypt

June 1992:

asking the government to investigate the assassination of the founder of the Egyptian Organization for Human Rights (EOHR - an ICJ affiliate) and to ban religious discrimination

December 1993:

expressing concern over legal proceedings against a member of the EOHR, following the release of his book concerning torture, and calling on the government to create a special commission to investigate torture and make recommendations

Israel

March 1992:

asking that the regular identity card of a field worker for the Palestine Human Rights Information Centre be restored

Palestinian Occupied Territories

April 1992: requesting an investigation into the shooting deaths and injuries at Rafah Refugee Camp and noting reports of random police fire

September and October 1992: expressing concern at the *incommunicado* detention of Amad Suliman Qatamish and possible indications of torture

Palestinian Autonomous Areas

July 1994: voicing concern over the death in detention of Fareed Hashim Abu Jarboua (arrested without warrant) in Gaza Central Prison

October 1994: to the Japanese Minister of Justice concerning a Palestinian seeking asylum in Japan from Kuwait

Saudi Arabia

June 1993: concerning measure taking against the founders of the Committee for the Defence of Legitimate Rights in Saudi Arabia

Syria

February 1993: voicing concern over the death in detention of Dani Mansourati and allegations of torture; calling for an immediate investigation; and offering to send an independent forensic expert

Tunisia

February 1992: concerning the interrogation of Moncef Marzouki, the President of the Tunisian League for the Defence of Human Rights (TLDHR) and asking that any charges be dropped

February 1992: expressing concern following a raid on the Amnesty International office in Tunis

June 1992: concerning the dissolution of the TLDHR

- February 1993: concerning the threatened expulsion of a member of the board of directors of the TLDHR (an Algerian national)
- March 1994: urging the release of Moncef Marzouki, former President of the TLDHR
- June 1993: concerning Dr Marzouki's detention; allegations of torture of Hammed Hamami; and seeming harassment by police of women who had expressed concern over freedom of expression

Publications

Publications concerning the "new" region during the triennium were:

- *Iraq and the Rule of Law* (1994 - in Arabic and English)

Following its long concern over the human rights situation in Iraq, the ICJ embarked on a two-year study of the Iraqi legal system, with a view to identifying the structural defects in such a system of justice. In February 1994, it published the results of that study that include, as an annex, the Iraqi government comments on the study. The ICJ study was extensively quoted in the report of the UN special rapporteur, Mr. Van de Stoel, at the 1994 session of the UN Commission on Human Rights.

- *The Civilian Judicial System in the West Bank and Gaza: Present and Future* (1994 - in Arabic, English and French).

The following articles appeared in the ICJ Review: *Civilians before Military Courts: The Trial of Muslim Fundamentalists in Egypt* (No. 51, December 1993); Bahrain, Iraq and the closing statement of a workshop entitled *Towards a Professional, Independent and Effective Arab Human Rights Movement* (No. 52, June 1994); and *Features of the Administration of Justice under Palestinian Rule* (No. 53, December 1994).

Centre for the Independence of Judges and Lawyers

The ICJ established its Centre for the Independence of Judges and Lawyers at its headquarters in Geneva in 1978. The Centre:

- promotes world-wide the basic need for an independent judiciary and legal profession; and
- organizes support for judges and lawyers who are being harassed or persecuted.

In pursuing these goals, the CIJL:

- intervenes with governments in particular cases of harassment or persecution and, in some instances, solicits the aid of a network of jurists and lawyers' organizations to do likewise;
- works with the United Nations in setting and implementing standards for the independence of judges and lawyers;
- organizes conferences and seminars on the independence of the judiciary and the legal profession;
- sends missions to investigate situations of concern in specific countries;
- provides technical assistance to strengthen the judiciary and legal profession;
- publishes an annual report entitled *Attacks on Justice: The Harassment and Persecution of Judges and Lawyers* which covers the status of judicial and legal independence in over 50 countries of the world;
- publishes a *Yearbook* to provide a global forum to discuss the independence of the judiciary and legal profession.

CIJL Alerts and Interventions

In all countries, an independent judiciary and legal profession are primordial for human rights to flourish - when they are threatened, every citizen is threatened. As the most serious cases come to the CIJL's attention, it acts immediately by contacting the respective government with its concerns and requests that the violation be remedied.

When appropriate, the CIJL makes its concern public and issues a CIJL Alert. The Alert is distributed to a network of judges' and lawyers' associations, the international press, and various human rights organizations, as well as other interested groups and individuals. The CIJL reserves the use of its Alerts for the most grave cases in which the response of its network is the most appropriate course of action.

During the triennium, the CIJL issued 25 interventions and/or Alerts concerning the harassment, detention, murder, intimidation, death in prison and unfair dismissal of judges and lawyers in the following countries: Australia, Colombia, Ecuador, Haiti, Indonesia, Lebanon, Malaysia, Malawi, Nigeria, Palestinian Occupied Territories, Philippines, Sri Lanka, Sudan, Syria, Thailand, and Turkey.

The process of publicising individual cases of harassment and persecution of jurists culminates every year in the publication of the CIJL's annual report, *Attacks on Justice*. For example, in the edition of the report covering 1994, the CIJL reported on 572 individual cases in 58 countries of the world.

CIJL Trial Observations

In March 1992, the CIJL sent an observer, Asma Khader (Jordan) to the trial in Damascus of lawyer Aktham Nouaisseh and 16 others for issuing a leaflet that described human rights abuses. It was the first time in three decades that an international organization had been able to observe a trial before the Supreme State Security Court in Syria.

The ICJ observer said that despite allegations of torture "none of the defendants were examined by a forensic doctor." She also concluded that the procedure "falls short of international standards pertaining to fair trial."

Mr. Nouaïsseh was sentenced to 9 years in prison with hard labour and 13 defendants received sentences of between 3 to 10 years; 3 others were acquitted.

On 5 June 1992, the CIJL issued a press release reporting the release of four of those sentenced. The Director of the CIJL said that it was an "encouraging sign" but that it must not be forgotten that Mr. Nouaïsseh and nine other defendants were still behind bars. The CIJL had called for all the sentences to be annulled and the allegations of torture investigated.

Similarly, the CIJL was involved in trial observations over the triennium in the following countries: Ivory Coast, Malaysia, Philippines, the Russian Federation, Thailand, and Turkey.

CIJL Missions

Egypt

Friction between Egyptian lawyers and the government following the death in detention of lawyer Abdel Harith Madani on 26 April 1994, contributed to the decision of the CIJL to send a mission to Egypt to:

- examine the various threats affecting the independence of the Egyptian Bar Association and its role in upholding the Rule of Law in Egypt;
- examine the causes and effects of the friction between the government and the Bar, and
- investigate the death of lawyer Abdel Harith Madani, and whether his death is connected with any act or omission by government officials.

The mission, which took place between 10-17 August 1994, comprised: Mrs. Asma Khader, a Jordanian lawyer and ICJ Executive Committee Member; Mr. Georges Flecheux, former head of the Paris Bar; Mr. Peter Wilborn, Assistant Legal Officer of the CIJL; and Mr. Baher Alashhab, a consultant with the ICJ Secretariat.

The members of the mission met with representatives of the Egyptian Bar and the Cairo Bar as well as members of the judiciary and legal profession, including the President of the Constitutional Court, Deputy President of the Cassation Court, members of the Arab Lawyers Union, and the Secretary-General of the Arab Organization for Human Rights. They also met with Egypt's Attorney-General.

Among the recommendations made by the mission were: that Egypt stop both trials of civilians in military and State security courts and the imposition of the death penalty; that lawyers be allowed contact with their clients without intimidation or interference; and that measures taken under the state of emergency be commensurate with the exigencies of the situation.

The mission was unable to obtain a satisfactory explanation of the arrest and subsequent death of Mr. Madani.

The CIJL issued a press release on 22 August 1994 announcing the completion of the mission and setting out the six preliminary recommendations by its members. The report of the mission, entitled *Clash in Egypt*, was released in May 1995 in Cairo.

Mali

The CIJL sent lawyer Bacre Waly Ndiaye (Senegal) to investigate a strike by judges that begun on 6 May 1992. The Autonomous Trade Union of the Magistracy, established in 1992, had called for the strike to protest serious infringements on the independence of the judiciary. Among other conclusions, Mr. Ndiaye reported that the judges wanted a law enacted that would preserve and formalise their independence.

Palestinian Occupied Territories

The ICJ/CIJL undertook a mission to evaluate the impact of Israeli military occupation on the Palestinian civilian judicial system in December 1993. The mission was followed by a seminar entitled *Towards an Independent Palestinian Judiciary*. For a report of the mission and seminar, see the section on the Palestinian Occupied Territories - above.

Seminars

Seminar on Judicial Functions and Independence in Cambodia

Between 5-23 July 1993, the CIJL held a Seminar on Judicial Functions and Independence in Cambodia, designed as a training programme for 56 potential judges of the Supreme Court and the Court of Appeals likely to serve under the newly elected government. It was hoped that the seminar would lay the groundwork on which to build an impartial Cambodian judiciary and to introduce the concept of judicial independence.

Introductory lectures (by seven judicial experts representing the major legal systems of the world) were followed by spirited discussion in plenary and in small working groups, indicative of the high level of enthusiasm among participants.

At the close of the seminar, the participants made a Final Declaration, emphasising, *inter alia*, the importance of the complete separation of powers in Cambodia; of a judiciary free from all forms of intimidation and persecution; and of the application of the presumption of innocence.

Seminar on Judicial Functions and Independence in Tunisia

The Seminar on Judicial Functions and Independence in Tunisia was organized by the CIJL and the ICJ in Tunis between 14-23

November 1993. This two-week programme trained 25 young Tunisian judges who had been selected for their aptitude. The ICJ/CIJL brought together international judicial experts to lead the participants through questions of international human rights law, criminal law, and constitutional and administrative law. For each subject, participants examined how the Tunisian system safeguards judicial independence. At the end of the seminar, participants approved a concluding document that set out certain strengths and weakness of the Tunisian legal system, and highlighted several possible legal reforms.

To the deep regret of the ICJ/CIJL, the results of this rich and highly constructive seminar were met with government rejection and interference. At the close of the seminar, the Tunisian Ministry of Justice pressured participating judges to withdraw their names from the seminar's final document. A new "final document" was created by the Tunisian authorities and circulated.

Some of the judges who had participated in the Seminar were contacted by the CIJL; they confirmed that they had been forced to sign a letter declaring the seminar's final document "null and void." Further, the judges stated that they had never seen the "final document" that was meant to replace it.

Having failed to get an adequate response from the Tunisian authorities, the ICJ/CIJL issued a statement on 9 December 1994 describing the events as a "frontal attack against the integrity of judges and the independence of the judiciary in Tunisia." On 13 December 1994, the ICJ/CIJL issued another statement reaffirming that the original document faithfully reflected the participants' views and that their approval of the text had been videotaped. The ICJ/CIJL expressed their regret that the Tunisian authorities had not only nullified the original document, but that they had also pressured individual judges into accepting a false one. The ICJ Secretary-General said that "Those who dared today to pressure judges to withdraw a document may dare tomorrow to pressure them to pronounce innocence or guilt."

The Media and the Judiciary

The CIJL and the ICJ held a Seminar on the Media and the Judiciary between 18-20 January 1994 in Madrid (Spain). The

seminar formed part of the CIJL's on-going study on the independence of the judiciary and the legal profession.

The 39 participants included judges, lawyers and media representatives from all over the world, who had dealt with those issues in the course of their profession. They examined the often thorny relations between a free press and an independent judiciary, touching on different issues such as the dichotomy between the need to inform the public and the need to avoid exercising undue influence in delicate legal proceedings. The seminar gave birth to principles agreed on by the participants (The Madrid Principles) destined to facilitate that relationship. Many different factors were taken into consideration, *inter alia*, increasingly global and transnational modes of communication and their impact on judicial procedures, the relation between ethics and judicial independence, the restraints that might be necessary for the proper administration of justice, media criticism of judges and their decisions as well as in-depth perspectives of these issues in several countries. An annex to the Madrid Principles defined strategies to help ease the relationship between the media and the judiciary.

The CIJL/ICJ issued a press release at the start of the seminar and another at its close (18 and 20 January 1994, respectively - the text of the Principles was attached to the latter). The papers of the seminar will be published in the 1995 edition of the CIJL *Yearbook*.

Enhancing the CIJL Network

Over the triennium, members of the CIJL Advisory Board, the Director and Assistant Legal Officer of the CIJL were called upon by international organizations to offer their expertise on the subject of judicial independence. The Council of Europe, CSCE, International Bar Association, *Union internationale des avocats*, Bar Association of Paris (and other bar associations), Caribbean Rights, and Penal Reform International are a few of these organizations.

The CIJL served as a consultant of a three-year project entitled Determinants of the Independence and Impartiality of the Judiciary, carried out by the PIOOM Foundation, a part of the Centre for the Study of Social Conflicts of the University of Leiden, the

Netherlands. The Project studies judicial independence in four countries: Burkina Faso, India, Philippines, and Sri Lanka. Researchers were selected from each country to study and report on issues of judicial independence. The programme meets annually to review progress made. The CIJL will consider joining in the publication of the final studies.

The CIJL also systematically seized the opportunity of the ICJ's work with African NGOs and the African Commission on Human and Peoples' Rights to disseminate information on judicial independence. More importantly, the CIJL was able to establish contacts in many African countries; contacts that allow the CIJL to perform its protective function.

Work at the International Level

UN Commission on Human Rights and its Sub-Commission

For years, the CIJL had targeted its annual report, *Attacks on Justice*, at the August meeting of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, the relevant international body. During the triennium, the tenure of the Sub-Commission's Special Rapporteur on the Independence of the Judiciary, Mr. Louis Joinet, ended. Mr. Joinet, the French expert on the Sub-Commission, had long been a strong supporter, as well as Advisory Board Member, of the CIJL, and the organization was very sorry to see his mandate end.

The end of the Sub-Commission's mandate, however, offered a historic opportunity to "upgrade" the subject of judicial independence to the UN Commission on Human Rights. This had been a long-term goal of the CIJL. After a focused lobbying effort, the CIJL's objective became a reality; on 8 April 1993, the CIJL issued a press release warmly welcoming the resolution of the UN Commission on Human Rights to create a Special Rapporteur on the Independence of the Judiciary.

The CIJL had been instrumental in the formulation and adoption of the resolution (a copy of which was attached to the press release).

The appointment of a Special Rapporteur was the result of years of incessant efforts and lobbying on the part of the CIJL, the ICJ and many other concerned NGOs. The CIJL urged all persons and organizations with relevant information to submit it immediately to the Special Rapporteur at the UN Centre for Human Rights.

Shortly after, the CIJL issued another press release announcing that Dato' Param Cumaraswamy (Malaysia), President of LAWASIA, Member of the Advisory Board of the CIJL and Member of the ICJ, had been appointed to the post.

As discussed below, the CIJL now targets its annual report, *Attacks on Justice*, at the March meeting of the UN Commission on Human Rights.

UN Commission on Crime Prevention and Criminal Justice

It is a priority of the CIJL to attend the annual session of the UN Commission on Crime Prevention and Criminal Justice, the intergovernmental body charged with the implementation of the Basic Principles on the Independence of the Judiciary and on the Role of Lawyers. The CIJL attended the first, second and third sessions of the Commission, which took place in Vienna between 21-31 April 1992, 13-23 April 1993, and from 26 April-6 May 1994 respectively.

At each session, the CIJL makes oral interventions stressing the importance of the application of the existing international standards in the field of crime prevention and criminal justice, particularly of the above-mentioned UN Basic Principles on the judiciary and the role of lawyers. The CIJL systematically calls on the Commission to reaffirm the importance of the effective implementation of those principles, to invite governments to pay due attention to them and to promote their wide dissemination, strengthen the mechanisms to monitor their implementation, and to consider them as a base for technical assistance programmes to consolidate the criminal justice system throughout the world.

The Commission set up an open-ended in-session working group to examine the application of, *inter alia*, the Basic Principles on

the Independence of the Judiciary. Due to the lobbying of the CIJL, these Basic Principles were at the centre of the Commission's work.

While the CIJL has seen some success for its efforts, the trend of the Commission is moving quickly away from the concrete implementation of international instruments. Even the use of words such as "implementation" and "human rights" is being challenged by certain governmental delegations. The CIJL is committed to continue to pressure the Commission to achieve its expressed purpose - the concrete implementation of international instruments related to criminal justice.

Publications

Attacks on Justice

The CIJL publishes an annual report entitled *Attacks on Justice: the Harassment and Persecution of Judges and Lawyers*. Originally, the report served to catalogue those judges and lawyers who were harassed or persecuted during the year. Over the triennium, the report expanded in size and scope to not only list individual cases, but also to analyse the country-specific contexts of these abuses. The report is fast becoming a globally recognised reference on the present state of national legal systems.

Each year, the report is distributed world-wide and receives wide attention from the international and national press. Furthermore, it is presented to the relevant UN bodies with great effect. At the 1993 session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur on the issue, Mr. Louis Joinet, began his oral report by praising the work undertaken by the CIJL and the invaluable input to be garnered from its yearly reports. Governments have been increasingly taking this report seriously; the amount of responses by governments to the report grows every year.

The 1992 *Attacks on Justice* was the fourth-annual edition of the report. It catalogued the cases of 447 jurists in 46 countries who had suffered reprisals for carrying out their professional functions. Of

these, 35 were killed, 2 were "disappeared," 17 were attacked, 67 received threats of violence, 103 were detained, and 223 were sanctioned. This was the first edition of *Attacks on Justice* to include the CIJL's analysis of legal systems in many countries.

In 1993, the fifth-annual edition of *Attacks on Justice* catalogued the cases of 352 jurists in 54 countries who suffered reprisals for carrying out their professional functions. Of these, 32 were killed, 3 were "disappeared," 34 were attacked, 81 received threats of violence, 95 were detained, and 107 were sanctioned. The report noted that this violence was carried out not only by governments, but also by opposition groups, land-owners, guerrilla, and para-military groups. This edition continued to give increasing attention to the contexts in which these violations of legal and judicial independence occurred.

In 1994, the timeline for the publication of *Attacks on Justice* was altered. Due to the establishment of the Special Rapporteur on Judicial Independence of the UN Commission on Human Rights, the publication of the sixth-annual *Attacks on Justice* was changed from August 1994 to February 1995. This edition was the CIJL's most complete report to date. The report described the cases of 572 jurists around the world. It also provided an analysis of the legal structures and prevailing human rights situations in 58 countries. This edition was the first to appear in French, as well as English.

CIJL Yearbook

The CIJL publishes its *Yearbook* (in English, French and Spanish) to provide a global forum for discussion on the independence of the judiciary.

In 1992, the first volume of the *Yearbook* examined the constitutional guarantees for the independence of the judiciary. Beginning with an overview of international principles, the *Yearbook* addressed the subject in Algeria, France, Italy, and Poland. These articles were written by leading judges and commentators. Many of the articles pointed out the pitfalls in the formal guarantees of judicial independence and addressed questions related to the separation of powers, the High Council of the Judiciary, as well as the mode of

selection, tenure, promotion, and removal of judges. The *Yearbook* concluded with a report of the Japan Federation of Bar Associations and a report of a CIJL trial observation in Syria.

In 1993, the second volume of the *Yearbook* focused on the legal protection of lawyers. The very different situations in India, Egypt, Belgium, and Cambodia were addressed. Each article was written by a leading practitioner in each country. Much of the volume was dedicated not only to the legal protection of lawyers, but also to their obligations to protect human rights as full partners in the administration of justice. The *Yearbook* also included the report of the Human Rights Committee of the Bar Council of England and Wales.

In 1994, the third volume of the *Yearbook* explored the judiciary in transition in Cambodia and in the Palestinian autonomous areas. The volume addressed many of the problems faced by the judiciary and legal profession as a whole to rebuild a functioning system of justice. It also included the Resolution of the UN Commission on Human Rights establishing a Special Rapporteur on the Independence of the Judiciary.

Chile: A Time of Reckoning

This study, published jointly with the ICJ (see above, ICJ Activities in Latin America) focuses on Chile as a case study on how countries in transition are dealing with the legacy of oppression. The 1989 transition to democracy in Chile raised hopes that past injustice would be rectified. Several measures, however, taken by the former military government have made this task difficult. The study interviews lawyers, representatives of Chile's non-governmental human rights organizations, relatives of victims of human rights violations, political prisoners, members of the judiciary, parliamentarians, and government officials, and assesses Chile's efforts to confront its past.

Study on the Independence of the Judiciary and the Legal Profession

In June 1992, the CIJL began work on an extensive, wide-ranging study on the independence of the judiciary and the legal

profession. A massive mailing of questionnaires to government missions in Geneva and to numerous NGOs was carried out and the results are being analysed. Most importantly, this process of information collecting has made it possible for the CIJL to continuously expand its institutional knowledge and capacity. It is the results of the study on the independence of the judiciary and legal profession that made it possible for the CIJL to analyse over 50 legal systems annually in *Attacks on Justice* (see above).

National Sections and Affiliates

The ICJ has 78 national sections and affiliates throughout the world. In order to encourage the flow of information between itself and its national sections and affiliates and between the national sections and affiliates themselves a regular section in the ICJ quarterly newsletter is devoted to national section and affiliate news, and carries articles about their activities, which are as varied as assisting the legal profession in Central and Eastern Europe and monitoring the human rights situation in Bougainville.

During the period 1992 to 1994, national section and affiliate activities directly linked to the ICJ included the following:

- the ICJ's European sections held two conferences - one in Strasbourg, in April 1992, the other in Budapest in September 1994. The Strasbourg meeting took place with the participation of jurists from Eastern Europe (Czechoslovakia, Estonia, Hungary, Latvia, Poland and Russia) allowing them to exchange views with their Western counterparts. The Secretary-General was one of the opening speakers. The ICJ issued a press release concerning the meeting and setting out the substance of the four resolutions adopted by the national sections and affiliates. The Budapest meeting considered the rights of minorities and the relationship between the right to privacy and the freedom of the media. It was agreed to establish a standing committee of the European sections of the ICJ to enhance co-operation. The ICJ delivered the keynote speech.
- in February 1992, the Vice-President of the ICJ's Polish section wrote an article for the Polish newspaper Rzeczpospolita about the ICJ and the newly formed Polish section;
- in the first half of 1992, the Netherlands Committee of Jurists for Human Rights recruited legal researcher Aart

Hendriks as European project officer for the ICJ; the post was funded by the European Community and was considered an interim step until the ICJ hired a European legal officer;

- the ICJ attended a colloquium organized by the American Association for the ICJ on *The Role of Government Departments in the Formulation and Implementation of Human Rights Considerations in Foreign Policy* in Stockholm, in October 1992;
- in April 1993, the Director of the CIJL represented the ICJ at the Steering Committee meeting of the European Sections of the ICJ, which was held in Vienna and hosted by the ICJ's Austrian section;
- the Secretary-General participated as a speaker in the annual general meeting of the Canadian Section of the ICJ in August 1993;
- the CIJL Assistant Legal Officer attended a colloquium co-organized by the Swiss Section of the ICJ with the Swiss Institute of Comparative Law, the Swiss Association of Judges and representatives of Swiss law faculties on *Basic questions of international law and constitutional law in the Baltic States*, which was held in Lausanne in December 1993.

The Director of the CIJL attended an international colloquium on *Human Rights: Protection Mechanisms and Political Change*, organized by the Gaza Centre for Rights and Law (an ICJ affiliate) in September 1994.

New National Sections and Affiliates

In January 1993, a group of lawyers in Copenhagen, Denmark re-established the Danish Section of the ICJ. The Chairman of the Executive Committee of the ICJ, Justice Michael Kirby attended the meeting that relaunched the section on 12 January 1993.

In September 1994, the Executive Committee approved the creation of an ICJ national section in Latvia. Called *Independence and the Rule of Law*, the section is based in Riga and is the first national section to be established in one of the countries that regained independence from Moscow following the demise of the Soviet Union in 1991.

In January 1994, the Executive Committee approved the recognition of the *Asociación Ecuatoriana de Juristas* as the ICJ's Ecuador National Section.

The Executive Committee also approved affiliate status for the Association for the Defence of Human Rights in Zaire; the *Association tchadienne de juristes*; the Egyptian Organization for Human Rights; and the International Human Rights Law Group (USA).

Financial Statement

INTERNATIONAL COMMISSION OF JURISTS

BALANCE SHEET AS OF DECEMBER 31, 1992

(with comparative figures of the preceding year)

(Currency - Swiss Francs)

	1992	1991
<u>A S S E T S</u>		
GENERAL FUND:		
Cash	45,027	41,689
Time deposits (Note 5)	2,990,000	4,030,000
Accounts receivable	226,694	327,599
Prepayments and deposits	27,042	30,902
	<u>3,288,763</u>	<u>4,430,190</u>
DONOR-DESIGNATED SPECIAL PROJECTS FUND (Note 2):		
Cash	28,727	24,938
Contributions to receive	423,130	-
Receivable from general fund	1,813,365	2,997,189
Other receivables	463,615	51,087
Prepayments	35,239	29,321
	<u>2,764,076</u>	<u>3,102,535</u>
<u>L I A B I L I T I E S</u>		
GENERAL FUND:		
Bank overdrafts	297,047	70,866
Contributions received in advance	(6,401)	204,348
Accounts payable and accrued liabilities	391,111	287,060
Payable to donor-designated special projects fund	1,813,365	2,997,189
Reserves		
- Reserve for possible discontinuance of operations (Note 4)	720,000	
- Fund balance	<u>73,641</u>	
Reserves	793,641	870,727
	<u>3,288,763</u>	<u>4,430,190</u>
DONOR-DESIGNATED SPECIAL PROJECTS FUND (Note 2):		
Accrued expenses	193,499	149,867
Contributions received in advance	2,192,544	2,528,897
Unexpended contributions	-	423,771
Deferred income	378,033	-
	<u>2,764,076</u>	<u>3,102,535</u>

INTERNATIONAL COMMISSION OF JURISTS

BALANCE SHEET AS OF DECEMBER 31, 1993

(with comparative figures of the preceding year)

(Currency - Swiss francs)

	<u>1993</u>	<u>1992</u>
<u>ASSETS</u>		
GENERAL FUND:		
Cash	168,189	45,027
Time deposits (Note 5)	4,230,000	2,990,000
Contributions to receive	26,551	-
Accounts receivable	102,954	226,694
Prepayments and deposits	<u>16,026</u>	<u>27,042</u>
	<u>4,543,720</u>	<u>3,288,763</u>
DONOR-DESIGNATED SPECIAL PROJECTS		
FUND (Note 2):		
Cash	146,431	28,727
Contributions to receive	-	423,130
Receivable from general fund	2,775,634	1,813,365
Other receivables	145,055	463,615
Prepayments	<u>111,811</u>	<u>35,239</u>
	<u>3,178,931</u>	<u>2,764,076</u>
<u>LIABILITIES</u>		
GENERAL FUND:		
Bank overdrafts	-	297,047
Contributions received in advance	-	(6,401)
Accounts payable and accrued liabilities	345,141	391,111
Payable to donor-designated special projects fund	2,775,634	1,813,365
Reserves-		
Reserve for possible discontinuance of operations (Note 4)	1,165,000	720,000
Other reserves (Note 4)	65,000	-
Fund balance	<u>192,945</u>	<u>73,641</u>
Reserves	<u>1,422,945</u>	<u>793,641</u>
	<u>4,543,720</u>	<u>3,288,763</u>
DONOR-DESIGNATED SPECIAL PROJECTS		
FUND (Note 2):		
Accrued expenses	155,927	193,499
Contributions received in advance (Note 2)	2,641,856	2,192,544
Deferred income	-	378,033
Unexpended contributions	<u>381,148</u>	<u>-</u>
	<u>3,178,931</u>	<u>2,764,076</u>

The accompanying notes are an integral part of this balance sheet.

INTERNATIONAL COMMISSION OF JURISTS

BALANCE SHEET AS OF DECEMBER 31, 1994

(with comparative figures of the preceding year)

(Currency - Swiss francs)

	<u>31.12.94</u>	<u>31.12.93</u>
<u>ASSETS</u>		
GENERAL FUND:		
Cash	193,817	168,189
Time deposits (Note 5)	4,502,500	4,230,000
Contributions to receive	-	26,551
Accounts receivable	118,928	102,954
Prepayments and deposits	16,047	16,026
	<u>4,831,292</u>	<u>4,543,720</u>
DONOR-DESIGNATED SPECIAL PROJECTS		
FUND (Note 2):		
Cash	466,856	146,431
Receivable from general fund	3,369,422	2,775,634
Other receivables	394,240	145,055
Prepayments	96,809	111,811
	<u>4,327,327</u>	<u>3,178,931</u>
<u>LIABILITIES</u>		
GENERAL FUND:		
Accounts payable and accrued liabilities	283,726	345,141
Payable to donor-designated special projects fund	3,369,422	2,775,634
Other liabilities	19,327	-
Reserves-		
Reserve for possible discontinuance of operations (Note 4)	925,000	1,165,000
Other reserves (Note 4)	56,000	65,000
Fund balance	<u>177,817</u>	<u>1,422,945</u>
	<u>4,831,292</u>	<u>4,543,720</u>
DONOR-DESIGNATED SPECIAL PROJECTS		
FUND (Note 2):		
Accrued expenses	38,488	155,927
Contributions received in advance (Note 2)	3,369,473	2,641,856
Donor-designated fund balance	919,366	381,148
	<u>4,327,327</u>	<u>3,178,931</u>

The accompanying notes are an integral part of this balance sheet.

The International Commission of Jurists (ICJ), headquartered in Geneva, is a non-governmental organization in consultative status with the United Nations Economic and Social Council, UNESCO, the Council of Europe and the OAU. Founded in 1952, its task is to defend the Rule of Law throughout the world and to work towards the full observance of the provisions in the Universal Declaration of Human Rights. It is composed of up to 45 distinguished jurists from around the world and has 78 national sections and affiliated organizations.



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