



INTERNATIONAL COMMISSION OF JURISTS

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High Level Expert Seminar on Economic, Social and Cultural Rights September 2005, Nantes, France

Speech by Nicholas Howen, Secretary General Opening Session, 5 September

Ambassador Doucin, Minister Zakane, Minister Parparkova, Minister Sciriha, Ambassador Escobar, Ambassador Koenigs, Ambassador Nordlander, Distinguished Ministers and Ambassadors, Representative of the High Commissioner for Human Rights, ladies and gentlemen of the diplomatic corps, members of the academic community, representatives of non-governmental organisations, and others,

As the Secretary-General of the International Commission of Jurists it gives me great pleasure to be here in Nantes at this High Level Expert Seminar on Economic, Social and Cultural Rights. I congratulate Ambassador Doucin and the Ministry of Foreign Affairs of Nantes for their vision and hard work. The ICJ has welcomed the opportunity to work with the Government of France and the Ministry of Foreign Affairs, particularly Ambassador Doucin, in advising on the preparation of this seminar. The City of Nantes and the Cité des Congrès de Nantes have provided us this superb venue in a beautiful city. Without the generous financial support of the Ministry of Foreign Affairs, the City of Nantes, l'Organisation internationale de la Francophonie and others, this seminar would have been impossible. And we thank them for making it possible for many experts and representatives from civil society to be involved.

The International Commission of Jurists has been calling for an Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights* for more than 15 years. We have co-hosted several meetings to better understand the issues and move towards making the Optional Protocol a reality: the first formal inter-governmental discussion organised with the Office of the High Commissioner for Human Rights in 2001; a seminar co-hosted by the government of Croatia in 2003 and a European Roundtable co-organised by the Government of Portugal last year. It is in this spirit that we are pleased once again to be involved in an event such as this.

But this seminar is different. It is a global event. We will benefit from experts and participants from all regions of the world. I welcome all of you: those who are regular attendees at such events; those who attend for the first time; and those who have travelled from far away.

This is an important gathering. But perhaps such an exchange of views will not be necessary again in the future. I believe that as an international community we are ready, indeed overdue, to begin drafting an Optional Protocol to the *Covenant*. As much as forums such as this help us to understand better the substantive issues that for whatever reason hold us back from real progress, it is time we acknowledged that we need to move beyond debate to drafting.

The International Commission of Jurists, alone, and as a founding member of the broad based NGO Coalition, believes that the lack of a complaints mechanism for economic, social and cultural rights is a major weakness in our international human rights system. A functioning Optional Protocol will give us all a more thorough understanding of economic social and cultural rights. It will strengthen the recognition that these are indeed rights. It will encourage states to adopt laws and policies that comply with their *Covenant* obligations. But above all, it will give individuals and groups a way to seek a remedy from an international body, as a last resort, if their rights under the *Covenant* are violated.

Over the last decades, the courts and governments in many countries *have* been gradually recognizing economic, social and cultural rights. There is now much more precise content to the rights to food, social security, education, health, shelter and other rights. Courts already consider, decide on and enforce economic, social and cultural rights – they are justiciable. The experts in this room will show that the question of justiciability of economic, social and cultural rights is indeed no longer a question. We will hear from people from many regions of the world and from many different legal backgrounds, on how ESC rights are protected and enforced in their country and regions. Yet governments hesitate to reflect this progress at the international level.

For too long the international community has denied victims of violations of economic, social and cultural rights access to an effective remedy. This Optional Protocol could positively change the lives of people around the world. It could help those who do not have access to even basic levels of education; people whose rights to shelter are denied and violated through forced evictions; people

whose limited access to health care places their lives in danger; people who struggle to survive without sufficient food to live on, or in areas where they have no access to clean drinking water; and people who face discrimination in accessing social security.

I believe the only option is a mechanism which establishes a comprehensive complaint and inquiry procedure. Individuals and groups of individuals who claim to be victims of violations of economic, social and cultural rights should be able to make complaints. Representatives of these victims should also be able to submit communications on their behalf. Complaints should be able to be made on all rights set out in the *Covenant* and victims should be able to claim violations of government obligations to protect, respect and fulfil these rights.

I encourage this gathering to examine and learn from other new and old complaints procedures. Under the First Optional Protocol to the International Covenant on Civil and Political Rights victims can complain about all rights and all levels of state obligations. It is time to treat economic, social and cultural rights as equally worthy of a full complaints procedure as civil and political rights.

Under the innovative Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, the Committee can, if it receives reliable information, investigate countries where there are grave or systematic violations. This power should be included in our Optional Protocol for particularly grave abuses of economic, social and cultural rights. I hope you will also look at ways the expert Committee could respond to emergency situations and to ensure that its decisions on complaints are in fact implemented by the government concerned.

We believe that in this process there are many lessons that can be learnt from the experiences and work of NGOs. We are pleased to welcome here the many NGO representatives who join the ICJ on the NGO Coalition for an Optional Protocol, and others from around the world with whom we work in partnership in promoting economic, social and cultural rights. I encourage government representatives to make the most of this unique opportunity to engage these advocates. They have much to share about their experiences of litigating ESC rights at a national and regional level, about their experiences of using other treaty body communications procedures, and about the benefits they see in elaborating an Optional Protocol.

Indeed, I am sure that each of you here will leave this beautiful city of Nantes enriched and revitalised. We are pleased that so many experts have agreed to participate. In advising the Steering Committee on the agenda and experts to invite we have tried to ensure a broad range of perspectives. We will have presentations from experienced academics, activists, lawyers, judges, diplomats and others. Some have been involved in implementing and interpreting economic, social and cultural rights for many decades, several have been actively involved in the discussions and negotiations on this issue at the UN. We have as participants representatives of states, the academic community, NGOs, national human rights institutions and others. We will have many views, but I believe we have one thing in common – a desire to learn from each other and find answers to any outstanding concerns regarding an Optional Protocol.

I sincerely hope that through this exchange of views we will have a better understanding of why an Optional Protocol is necessary, and how it can provide redress to the victims of rights violations around the world. It is the ICJ's hope that over the next three days we can explore and learn about the issues that some see as barriers to their fully supporting the drafting of an Optional Protocol. In the end, your deliberations should help and lead to further progress at the next Open Ended Working Group. It is vital that this next Working Group recommend to the Commission on Human Rights that its mandate be extended and expanded. It is essential that work begin to draft an Optional Protocol text. The ICJ considers it is imperative that UN member states now make swift progress, to create an instrument that will better protect economic, social and cultural rights and improve the lives of people worldwide.