

For the Rule of Law

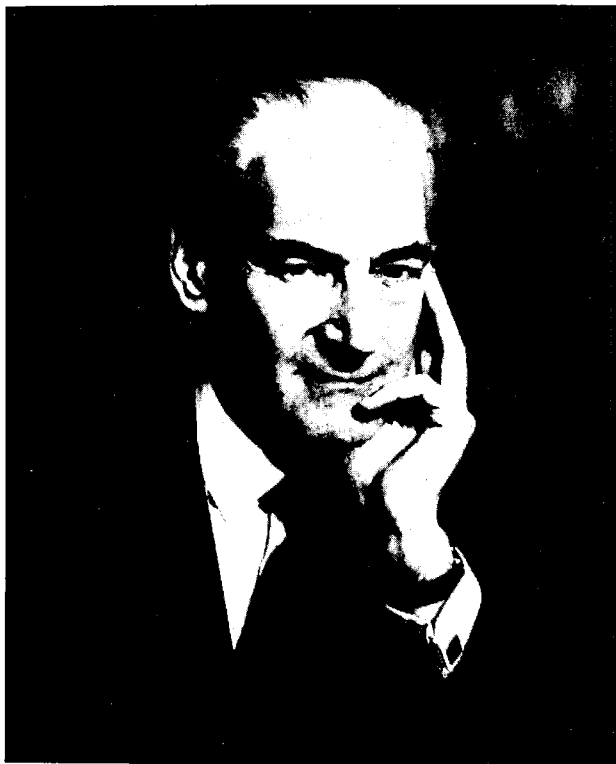


The Review

International Commission of Jurists

In Memoriam

Niall MacDermot OBE (Mil), CBE, QC



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Associates of the International Commission of Jurists

The International Commission of Jurists (ICJ) is a non-governmental organizations devoted to promoting throughout the world the understanding and observance of the Rule of Law and the legal protection of human rights.

It is headquartered in Geneva, Switzerland, and has 80 national sections and affiliated legal organizations. It enjoys consultative status with the United Nations Economic and Social Council, UNESCO, the Organization of African Unity (OAU) and the Council of Europe.

Its activities include publishing the Review; organizing conferences and seminars; conducting studies or inquiries into particular situations or subjects concerning the Rule of Law; sending international observers to trials of major significance; intervening with governments or issuing press statements concerning violations of the Rule of Law; sponsoring proposals within the United Nations and other international organizations for improved procedures and conventions for the protection of human rights.

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Announcement

Due to temporary financial constraints, the Executive Committee of the International Commission of Jurists resolved at its 18 January 1997 meeting that the ICJ Review will no longer be published twice a year but once yearly, in December. We deeply regret this temporary measure and call on our readers to assist us in resolving this problem. The next issue of the ICJ Review, therefore, will be dated December 1997.

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Foreword

When you are in charge of running an organization, particularly an NGO, you soon become a part of it. But when, like Niall, you head the Organization for two decades, it becomes a part of you.

Niall MacDermot and the ICJ were, for twenty long and eventful years, part of each other. Unlike most people who have been for so long in a position of power and prestige, Niall knew when it was time to go, because he believed that, in the end, institutions are more important than individuals.

At one of the Executive Committee meetings of the ICJ a few years ago he announced that we must find a successor for his office the following year. His decision was final. He had brought the ICJ to great heights of glory, and he had been responsible for its manifold achievements. But he was conscious of human frailty - the ICJ must go on even though he could no longer guide its programme of activities. And so it was that the two inseparables were parted.

The ICJ has lost its great champion, its hardest and most indefatigable worker. During his stewardship, the Commission had seen many vicissitudes which he had overcome, had also experienced many thrills of triumph in which all its members had shared. When a great oak falls, the forest is no longer the same.

Of Niall MacDermot it could be said, as was said of one of the saints of old: He had fought a good fight, he had finished the course, and he had always kept the faith. Whether at work or in retirement Niall MacDermot's abiding faith was in the Rule of Law. It is of some comfort to us that it was and still is the principal objective of the institution he so cherished.

Our hearts go out to his brave consort for many years. She loved him deeply and missed him tenderly till the end.

May his soul rest in peace.

Fali S. Nariman
*Chairman of the Executive Committee
of the International Commission of Jurists*

"Adieu Niall"

*Adama Dieng**

Niall MacDermot, former Secretary-General of the International Commission of Jurists (ICJ), died at the age of eighty on Thursday 22 February 1996, in Geneva. He took his leave of this life after a long and difficult struggle for the respect of the Rule of Law in all parts of the world. A courageous and painful struggle. He was the first person to go to Chile immediately after Pinochet's coup d'Etat, and to testify before the UN Commission on Human Rights to the horrors of the dictatorial night of the military regime. He stood up against all dictatorships to defend the right and lives of the oppressed.

Over the two decades (1970-1990) during which he directed the ICJ, he translated into concrete deeds his devotion to the principles of universality and equality. This was a real challenge because, in succeeding Sean MacBride, Niall had to restore the credibility of the ICJ, shaken by a financial crisis and by the controversy about its possible shadowy relationship with the CIA. Only his unshakeable faith in humankind permitted him to win the battle. Whether it was in Latin America, Africa, the Middle East or Asia, he contributed to the development of the international movement of human rights by assuring protection,

with moral, intellectual and practical support, to the organisations which are today the pride of the South - the Andean Commission of Jurists, Al Haq - the Law in the Service of Man, NADEL in South Africa, to cite only a few.

Thanks to him and to a Swiss banker, the late Jean-Jacques Gautier, Europe was endowed with a precious instrument for the respect of human dignity: the European Convention for the Prevention of Torture. Niall MacDermot contributed also to the drafting of the numerous international human rights instruments such as the Convention on the Rights of the Child, the Basic Principles on the Independence of the Judiciary, the Declaration on Enforced or Involuntary Disappearances and the Limburg Principles on Economic, Social and Cultural Rights. Convinced that even the most protective treaties on human rights would be an illusion if they were not applied, he launched a programme of legal aid in favour of the most deprived groups. It is thus that one encounters today, in the rural areas of the South, defenders of human rights - named the "paralegals", also called "barefoot jurists", in Senegal or in the Philippines.

* Adama Dieng is Secretary-General of the International Commission of Jurists.

The entire world community of human rights mourns the loss of a visionary man and of a humanist whose work and whose ideals will not readily be forgotten.

Niall was, for a whole generation of human rights activists, what I can only define as the light. Niall illuminated by his knowledge and by his militancy the work that we pursue today. But his strongest point was essentially his conviction that the human being is the centre of everything. All his life, he fought for the respect of human dignity. Niall never ceased to deploy his efforts in support of the triumph of the Rule of Law, truly the central force for progress. His voice still rings in my ears when he affirmed that the superior and imperious demands of social justice - an integral part of the great principles of justice which we defend - are an integral part of the great principles of justice.

Niall deprived himself and with him his companion, wife and friend Ludmila. He was able, through sacrifices, to restore credibility to the ICJ which for a time had been tainted by doubts through a close collaboration with the American services. His courage, his bravery and his devotion enabled the ICJ in the space of five years between 1970-1975 to become once again the beacon organisation, the torch-bearer of the human rights movement.

Niall understood very early that the East-West conflict could only prejudice human rights. That is why he took on himself the initiative to convene a meeting with the Soviet jurists. It took courage to do it. A first meeting took place in

Madrid and was followed by a second one in Moscow. But Niall was also the champion of the defence of economic, social and cultural rights. You will remember that the Limburg conference on economic, social and cultural rights greatly benefited from his contribution. Thanks to Niall, many Western jurists who did not consider economic, social and cultural rights as an integral part of human rights were convinced to the contrary.

In evoking the name of Niall MacDermot I see again the man in a village in Senegal where for the first time he joined the country people. We were all there, university professors, lawyers and magistrates, but also - and he insisted on it - there were the country people. And at the end of the meeting, which focused on the legal services in the rural environment, the university professors from Dakar, the judges and other intellectuals who were there, had learned an enormous amount from the contribution of the rural populations. Since that day we have continued this battle to ensure that the poorest populations should have access to justice, to the law, so that they can contest effectively the arbitrariness of governments.

I keep also another enduring memory. It concerns the American intervention in Panama. With his perceptive pen, he immediately composed a press release and he said to me that day: "We must continue to defend human rights, come what may. If human rights and the principles of international law are held to ridicule, even by the greatest power in the world, we must as jurists denounce it". That is what he did that day. I will never forget it.

Another example was when George Schultz sent us a long telex in 1983, inviting the ICJ to work for democracy. It was at the time of Ronald Reagan's famous *Democracy Project*. It was out of the question for Niall to accept the hundreds of thousands of dollars offered by the US government to promote this idea of Reagan democracy throughout the countries of the South. In front of the Executive Committee of the ICJ he asked, and it was agreed, that this offer should be rejected. Undoubtedly the man, in addition to his distinguished knowledge of the law, was also a man of principle.

Before undertaking the duties of the Secretary-General of the International Commission of Jurists, Niall MacDermot was a Member of the British Parliament (1957-59; 1962-70). He was Financial Secretary to the Treasury and Minister of State in the Department of Housing and Local Government in Harold Wilson's government (1964-70).

His precious legacy will continue to inspire generations of defenders of human rights.

A Senegalese author - Birago Diop - once said: "Listen more often to the voice of things rather than the voice of creatures because the dead are not dead, they are in the dormant water, they are in the water that sings, they are in the water that cries." I could say that Niall MacDermot is not dead, he is in the voice of the anonymous representative of an NGO speaking in a conference room to denounce the horrors of human rights violations in this or that country. He is in the resolution which the Commission on Human Rights will adopt to safeguard fundamental freedoms. He is in the minds of each and all of us to the end of time. The best tribute we can render him is to be faithful to his work.

Ibrahima Fall

*United Nations Assistant
Secretary-General for Human Rights*

Part One

...When journalists and historians, in increasing numbers, ask me about the past, I always answer that Niall MacDermot was an exceptional figure. I can say that during my long existence I have known a number of men and women who were very famous, but Niall was the most brilliant man I have ever met. That is my profound conviction, and I am not likely to ever change it.

The manner in which he performed all the tasks that had been assigned to him constitutes the best confirmation of my judgement....

**Alexandre Marc (Centre international de formation
européenne)**

...Niall MacDermot was the great force that helped us establish Al-Haq, which became one of the largest human rights organizations in the region. ...He has also played a significant role in the formulation of international human rights law....

**Al Haq
(ICJ Affiliate in the West Bank)**

A Tribute to Niall MacDermot

*Edith Ballantyne**

Niall MacDermot was to us an excellent and exemplary colleague, and he was a marvellous person whom I had a chance to get to know. Not all in our NGO community had that chance. We respect Niall. Certainly I have always respected Niall as a good colleague, and I learnt to respect him for his humanity. I would just like to share two events, to illustrate what I mean.

Early in 1972, when we first organised our sub-committee to combat racism and racial discrimination, it was by many looked upon with some suspicion. But Niall was there to give his very strong support from the very beginning. When later we organised what was probably the first major NGO conference on discrimination against indigenous peoples, Niall joined us in our organising committee. We were a mixed group, and agreement was not always so easy to get. Niall did not always agree with some of us, but as a good democrat he always accepted the majority position and stood by it. We had an extremely interesting and good conference, but we got into trouble with one of the major governments whose Ambassador [in Geneva] accused us of not having allowed them to take the floor, having discriminated against them and having been very dishonest. He gave a press conference at which he said all this. Niall would not

accept that. He insisted that the Ambassador receive the two of us, and the Ambassador accepted to meet us. The voices got very strong and loud, and I was sitting by very timidly, listening to the harsh words in both direction. I was pleased as I saw Niall winning his point and receiving an apology. I found that meeting very courageous and inspiring because Niall could easily have let it go. This was almost 20 years ago, and I must say in those 20 years I have learnt to get courageous and to speak up. I thank Niall for that because it was really a wonderful lesson that he gave. I do not think Niall ever realised that that is what happened.

Niall as a human being and with his humanity I had a chance to get to know when a group of us were invited to an important human rights conference in a country where the women's position and the attitudes towards women were not what we women want. Niall was the guest of honour and got a real "V.I.P." treatment. Many things were organised, and we women were not always remembered to be invited. But Niall insisted - he was in a position to do so and he did so, though he did not have to do so - that we were included, and he himself would not go if we could not be part of the events and celebrations. Niall took us to many places, and I was

* Edith Ballantyne is President of the Women's International League for Peace and Freedom.

so impressed by the knowledge of the history and culture of the country he possessed and which he shared with us. And then, one day, he took us to the market, to the souk, and there he told us a little bit about his family, about [his wife] Ludmila and his sister. He was looking for presents to take back, to give pleasure to them. He took so much trouble over it and explained to us in detail why he was looking for this and that. He would not let go until he found what he had looked for.

There was something gentle, kind, thoughtful and considerate about Niall that was not so easy to see, because Niall in his relations could be rough, and we had exchanges that were not easy. But he was always extremely respectful of the other person, of other people's views and he could listen. I think he respected those who stood for principles and for causes, just as I respected Niall for the things he stood up for. I will always remember Niall saying: "But we believe in the Rule of Law and we defend it."

A Tribute to Niall MacDermot

*Renée Bridel**

Niall was for all of us a symbol of the struggle for human rights. His immense knowledge of the law made him a lawyer of great international renown: he mastered not only the legal anglo-saxon concepts of Common Law but also European Law, Roman Law and the Napoleonic Code - and of course, since the founding of the United Nations, the new international law which had been generated by the Charter and its implementation at the global level. His vast knowledge covered all the aspects of justice and of legal science. Niall, however, always remained extremely reserved and modest in the face of his great successes and his own personal prestige.

But the most unique facet of his personality was his innate sense of justice. It was a gift from the heart and from the soul. He used it for the protection of the weak and to promote the respect of human beings in all countries and under all latitudes. That gift could not have been obtained from books and through international standards. Our International Association of Democratic Lawyers (IADL) knew someone who resembled him in the person of our first President, René Cassin. It is for that reason that the loss of Niall MacDermot touches us in the highest degree.

He was a sincere friend to us. He was always ready to attend our congresses and to sympathise with those of our preoccupations that seemed to be also his own. We were honoured by his presence which gave us much joy. Not only did he know how to listen, but also how to share, criticise and laugh. He knew how to defend a cause by making full use of his sense of humour, of the absurd and of his taste for irony. Alternatively, and at other times, he would demonstrate his utmost indignation at the injustices which were occurring in some of the countries in which we happened to be gathering.

He was a *Gentleman*. I never met anyone for whom this term was more fitting. He epitomised elegance, honour and honesty. Everyone admired his towering sleek figure and in all meetings he was immediately noticed. There can be no doubt that he will be surely missed in the meetings of the UN Commission on Human Rights. In the last few years his visits became less frequent but when he came he was noticed by everyone, his appearances seldom went unnoticed. His clothes, his manners and his way of speaking were absolutely elegant and he spoke to everyone alike with the same extreme courtesy. His thoughts showed a distinction of heart and of the soul. Niall was infallibly honest and had been so

* Renée Bridel is the representative of the International Association of Democratic Lawyers in Geneva.

for all of his life. His right-mindedness, rectitude and integrity permeated all the spheres in which he had been asked to give an advice and where his opinion had contributed to shape the debate or the struggle for justice. He was an honest man, in the sense given to the expression *un homme honnête* in the eighteenth century, meaning a person who knows how to live in harmony and in a right way in the midst of beauty, surrounded by the works of artists, giving artists a place of choice in his life. In doing so he was completely devoid of any idea of personal profit or gain. His nomination to the governing board of the Tate Gallery in London bore testimony to the quality of his judgment and to his refined taste for paintings and objects of art.

Throughout his work and his life he was always supported by [his companion] Ludmila with tenderness and no hesitation. Our organisation had a member who was infinitely devoted to this exceptional couple. Her name was Solange Bouvier-Ajam. She represented the International Association of Democratic Lawyers in Geneva and was also a gifted lawyer and the founder of the *Maison de la pensée française* in Paris. But she was above all a war companion of Niall. Both of them had

played an important role in the fight against the nazis: Niall in the Intelligence Corps, appointed by General Montgomery to assist in the preparations of the allied landing in Normandy, and Solange in the ranks of the free partisans of the French Resistance. Their common past had consolidated their entente which they shared with another lawyer, Joe Nordman, who was our President until 1991, and who is credited for the links that have been forged and maintained between our two organisations: the ICJ and the IADL.

Me. Joe Nordmann, President Emeritus of the IADL, Me. Michel Blum, son of Me. Solange Bouvier-Ajam, and Me. Amar Ben Toumi, the newly elected President of the IADL, hereby express their most sincere condolences.

We pay tribute to Niall MacDermot and to his life, which in many respects have been exemplary. We also pay tribute to Ludmila, his widow and companion, to whom we express our affection and support.

Au revoir, Niall, so long... You will always remain in our hearts.

A Global Advocate of Freedom

William J. Butler *

It is truly a great honour for me to pay tribute to a truly extraordinary man and, because of his countless contributions to the endless struggle for human liberty, to one of the most significant lives of the twentieth century.

Others will portray his many years as a member of the British Labour Party; as a member of Parliament; as a Minister in the British Government and as a distinguished Queen's Counsel practising in London.

But I would like to say a few words about the last twenty-five years of his life, a time when he was Secretary-General of the International Commission of Jurists (ICJ) and a time when I was privileged to act as his Chairman from 1975 to 1990.

During these many years, the circumstances of our lives brought us together in the most intimate ways. We found ourselves in constant, almost daily contact not only discussing the protection of human rights throughout the world, the staffing of human rights missions, the publication of country reports and other ICJ publications, the taking of ICJ positions at the United Nations, but also the building and administration of a new ICJ, truly international in composition and

dedicated to the proposition that *all* human rights, and I emphasise *all*, the civil, political, social, economic and cultural rights were interdependent and must advance without priority side by side, pursuant to the Rule of Law.

During these many years and in pursuit of this noble endeavour, I know of no man who has contributed more, in one lifetime, to the protection of fundamental human rights and freedoms everywhere.

Those who knew him best, knew his aversion to empty rhetoric. He was in every sense an activist. When there was trouble, he did not just write a letter or issue a press release, he did something about it and always with hope, passion, curiosity and even on occasion with humour.

No matter where we turn, we find traces of his leadership. I will permit me to reflect on some of his outstanding initiatives.

Development and the Rule of Law

In the 1960s and 1970s, most Western governments and most non-governmental organisations concerned

* William J. Butler is the President of the American Association for the ICJ (AAICJ) and former Chairman of the Executive Committee of the International Commission of Jurists (1975-1990).

themselves only with the implementation of the civil and political rights. Some still do. Niall and the ICJ, however, regarded social, economic and cultural rights to be also fundamental to the full realisation of human freedom. Since 1959, the ICJ had determined – in its “Declaration of New Delhi” – that the Rule of Law included economic justice. In 1981, Niall decided that we should do something about it. He assembled a world conference of judicial experts which concluded that all human rights are not only interrelated but, more importantly, were interdependent. This principle, confirmed by the United Nations World Conference on Human Rights in Vienna in 1993, is still one of the cornerstones of ICJ policy today.

In Africa

Many of Niall’s initiatives concerned themselves with the Rule of Law in Africa. I remember in 1976, a year after I became Chairman, Niall courageously convened an international conference of experts on “Human Rights in a One-Party State” in Dar-es-Salaam, Tanzania. The ICJ and Niall were severely criticised for even suggesting such an idea. In the end, the ICJ and Niall reaped credit for helping to develop a dialogue between the West and the former colonial States of Africa.

Intense discussions followed throughout the ICJ which resulted in the 1978 Conference of Experts at Dakar, Senegal, where forty-eight internationally prominent jurists concluded that ultimate freedom included the right to

development, peace, a satisfactory environment and a just economic order.

It was at this assembly that we first met our present Secretary-General, who was then an assistant to our then President Kéba Mbaye.

During Niall’s twenty years as Secretary-General, we saw Niall drafting and implementing the “African Charter on Human and People’s Rights”, the development of grassroots organisations to train paralegals in the rural areas, his constant fight to eradicate *apartheid*, not to mention his sending countless human rights missions to areas of Africa where egregious violations were occurring.

In the Middle East

In 1980, I remember our conference on “Human Rights in Islam” in Kuwait, where we invited twenty-six Islamic States to participate in a dialogue on the differences between Islamic and Western jurisprudence and culture. It was virgin territory for any NGO and for many of the States involved as well. In the opinion of many, it helped to encourage a general discussion of the contributions of Islamic law to world order.

Niall was infuriated by the Israeli treatment of the Palestinians and helped found “Law in the Service of Man” (now known as Al-Haq), which is the West Bank affiliate of the ICJ. At the same time, he often mentioned his highest respect for Haim Cohn of the then ICJ National Section of Israel.

In Asia

Of the many Asian initiatives, I remember in particular his involvement with the rights of mental patients in Japan. When our Japanese member asked him to take certain steps to pressure the Japanese government into recognising the rights of these sick people, he made several trips to Japan, and together with his colleagues there drafted legislation which was approved by the Diet, the Japanese parliament, and which resulted in the realisation by these souls of their basic rights which had been denied for so many years.

In Latin America

Of his many interventions in Latin America, I remember most his involvement in the Chile and Argentine human rights crises. He was a regular commuter to the area. He never gave up, he never relented his persistent pressure on governments to conform to the Rule of Law. He convened conference after conference. I remember one in particular, "Human Rights and Development" in Barbados, and another on "Human Rights in the Andean Region", out of which was established the now prominent Andean Commission of Jurists – and there was more – the missions to El Salvador, Guatemala, Uruguay, to only mention a few.

I could go on and on, singing the praises of this truly outstanding and most remarkable man. There are so many of his accomplishments which I have not mentioned like:

- his life long commitment to eradicate

torture; his participation in the drafting of the European and United Nations conventions on torture;

- his role in bringing about the United Nations Principles on the Independence of the Judiciary and the Role of Lawyers;
- his editorship of all ICJ publications;
- his receiving on behalf of the ICJ the "First European Human Rights Prize" in 1980; "The Wateler Peace Prize" in 1988, and "The Erasmus Prize" in 1989;
- his contribution to the Centre for the Independence of Judges and Lawyers (CIJL), which I had founded in the AAICJ and which, at Niall's request, was transferred to the ICJ in late 1977, and
- his leadership of several ICJ missions to Moscow opening up the earliest dialogue between Western jurists and Soviet lawyers and judges.

Niall was always a very close personal friend of mine. I consider myself lucky to have been at his side. The world is better off because he lived. What more can one say at a time like this?

A great American, Oswald Garrison Villard, once remarked: "Let your country be the world and your countrymen all of mankind." Niall fitted this description. He was a world citizen, a friend of mankind.

Someone once said: "To live in the hearts of those you love is not to die." Yet I feel more alone because he is not nearby.

John Donne said it best: "No man is an island, entire of itself ... any man's death diminishes me, because I am involved in mankind", and therefore never ask "For Whom the bell tolls; it tolls for thee".

While we all may indeed feel diminished, let us not lament his passing but rather rejoice for being a part of a most productive, rewarding, dedicated and useful life,

a life which had a beginning but no end;

a life which resembles a noble and timeless work of art.

Au revoir, mon cher vieil ami.

In Memoriam Niall MacDermot

*Haim H. Cohn**

The International Commission of Jurists was established to explore and expand the Rule of Law in the world. It was the great achievement of Niall MacDermot as Secretary-General to make the Rule of Law subservient to Human Rights.

Before he took office, our sessions and conferences were devoted to the Rule of Law as such; after his arrival, agenda and discussions were focused more and more on human rights as the ultimate goal, nay the true justification, of the Rule of Law.

Human rights always found the framework within which to be observed and enforced, in the Rule of Law as commonly understood; but he was concerned not so much with the remedial as with the substantive context. And as everyone of us, so had he his own predilections among the various human rights. His passionate concern with judicial independence and integrity, and with the protection of persons suspected or accused of crime, as well as his active involvement with the prevention of torture, were surpassed only by his

overmastering zeal to assure economic and social rights to peoples of underdeveloped or developing countries.

I shall never forget the eloquence and enthusiasm with which he unfolded his development theories and projects, at our Scheveningen conference in the early 1980s; and I venture to think that he counted as the most important of his many accomplishments that he succeeded to bring consciousness of their human rights and dignity to the hearts and minds of innumerable oppressed or underprivileged human beings.

I shall always cherish his memory as an indefatigable fighter for progress and liberty, as a highly motivated and most courteous colleague, and as an inspiring legal mind. And I owe him a personal debt of gratitude, not only for introducing me to the culinary delights of Genevoise gastronomy, but also for graciously attending to my well-being when I found myself hospitalised in Geneva.

He was a great man, and the most congenial friend.

* Haim Cohn is an Honorary Member of the International Commission of Jurists from Israel.

...I have known Niall for the last twenty years and have always admired his deep sense of commitment and his untiring efforts to realise the goals he set for the ICJ. I worked closely with him on issues relating to judicial independence....

Dato' Param Kumaraswamy
(ICJ Member, UN Special Rapporteur
on the Independence of Judges and Lawyers)

...As to most of us, to me Niall MacDermot was one of the first and prominent teachers I had the privilege to meet and to benefit from him for many years. He became to me and to our work a good companion and a good friend for nearly two decades....

Werner Lottje
(Human Rights Secretary,
Diakonisches Werk der EKD)

A Tribute to Niall MacDermot

Me Jean-Marie Crettaz*

Others recalled before me and with intense emotion the life of Niall MacDermot. They described his achievements. As for me his life was in itself an achievement, his achievement: *son œuvre*.

It is in the city of Geneva that Niall MacDermot spent the latter part of his life. And it is in Geneva that he shaped the last part of his achievement. Geneva, therefore, owes much to this noble and immense servant of law and justice. Along with the *Palais des Nations*, the city of Geneva is in mourning. Let me revisit today what were Niall's great contributions to this city.

Despite his anglo-saxon culture and upbringing and although he was a former parliamentarian in England, Niall MacDermot was also a great citizen of Geneva. It can even be said that he was a standard-bearer of what has been immortalised as the "Spirit of Geneva" – *l'esprit de Genève* – in the sense given to the term in 1929 by writer Robert de Traz.

Indeed, Niall MacDermot was totally committed to international affairs and so he closely monitored everything that was happening in the *Palais des Nations*. Of Geneva Robert de Traz said in a few lines: "A city of immigration and of refuge, an epitome of nations, Geneva

owes to the outside world most of its qualities while moulding them to her own image. Her greatness stems from the fact that she enrolls people from other nations and transforms them into true Genevois."

I agree with Robert de Traz that the name of Geneva, which indeed transcends any particular signification, has, through a strange metamorphosis process, become a symbol which is referred to in this city as the "Spirit of Geneva". And I would say that Niall MacDermot – for I have witnessed it myself – eventually sublimated the values inherent to the Spirit of Geneva. It is because he was a great jurist that he became the epitome of the Spirit of Geneva in the legal sphere. This is true because he was convinced that there was so much evil and injustice in the world and because he was convinced that the challenge generated by so much injustice had to be met by persons of good will. He worked relentlessly and with all his might, courage, talent and determination to uphold the symbols embodied in the Spirit of Geneva and to reject injustice in all its abhorrent forms. Every day and every morning he was the champion of protest and of the metamorphosis of societies that were being undermined by injustice.

* Jean-Marie Crettaz is a lawyer in Geneva. He has long been associated with the International Commission of Jurists and took part in some of its missions.

Lets us consider another quotation of Robert de Traz which I think could have been Niall's motto: *Au-delà de l'évidence actuelle, il tente le futur* – "Beyond the obviousness of the present, he appeals to the future". One of the great fields of work of the ICJ was South Africa. Niall MacDermot was adamant in associating the Geneva Bar with the mission that he had set up in 1987 to South Africa and in which I had the honour to participate as a representative of the *Ordre des avocats de Genève*. That happened not so long ago, yet it seems that an eternity has elapsed for so many things have changed since then. Those times were hard and difficult. Our mission was clandestine and had been forbidden. We entered the country by pretending to be either businessmen or tourists. However, the police rapidly found out what we had come for. Niall MacDermot who had stayed in Geneva as chief of operations received phone calls of protest and recriminations from South African diplomats in Berne just a few hours after our arrival in the country. But his firmness, self control and natural authority made it possible for us to pursue the mission which ultimately culminated in the publication of the ICJ report entitled *South Africa and the Rule of Law*, which became an undeniable bookshop success story and contributed modestly but efficiently to the struggle against *apartheid*.

It is during the preparation phase of that mission and in the subsequent editing of the report that I had the occasion – along with my colleagues from Ireland, England and Germany – to meet Niall MacDermot on a frequent basis. We all appreciated his extraordinary talents as an eminent, meticulous

and precise lawyer, but what we esteemed above all other things were his qualities as a person: the deepness of feelings and the warmth which lay behind his cool facade.

The conclusion I draw from the years he spent in Geneva is that Niall MacDermot affirmed himself as a continuator of the great founding fathers – Rousseau, Calvin and Henri Dunant – of the city's international character. His authority and the international recognition he gained could only be equalled by his modesty. Let me illustrate this with a recent anecdote: a friend of mine who is also a well-known African personality and presently one of the closest advisors of President Mandela recently told me about his last conversation with the South African President. They talked about Geneva, the ICJ, Niall MacDermot and our mission to South Africa. He discovered that after all these years Nelson Mandela had remained very thankful to the Commission and its Secretary-General for what they had done. As for the ICJ's report *South Africa and the Rule of Law* it was still in Mr. Mandela's office as one of his reference books. I would have liked to tell that to Niall. Unfortunately, I never had the opportunity to do so. He left us just too soon. I would have been pleased to transmit this anecdote to him on a Saturday morning when we occasionally met whilst shopping in the Rive market in Geneva. This is why I transmit this message to him today - posthumously.

Niall belonged to the elite. He will remain a source of perpetual encouragement and an example for all of us. We will never forget the guiding

principles of his life and his constant and absolute devotion to the cause. His *règle de vie* could be summarised as follows: "The lukewarm struggle in vain against injustice and the Rule of Law; those whose voices are dim will never be heard." That message is his legacy.

It is difficult to speak of Niall in a past tense. Niall was an ideal and modest master. He has forever cast a lasting imprint in our hearts and in our souls. In this moment of deep sorrow, Geneva remembers what he did for her. From his modest office

room on the route de Chêne, his gentle, and often even thin, voice seemed like the mighty roar of a lion against injustice in the world. It is difficult to speak about Niall in the past tense, but thanks to God and to divine providence, the lion's voice still resounds today in the ears of the world.

May Mrs. MacDermot, Niall's family and all his friends in the *Palais des Nations* find in these few lines true compassion, sympathy and devotion – because we all believe in the Rule of Law.

...Niall was a friend to me. We felt a lot of sympathy and attachment for one another. He dedicated his life to the defence of human rights. But much of his action was in fact devoted to Africa....

Justice Kéba Mbaye (ICJ Honorary Member, former Judge at the International Court of Justice, former President of the International Commission of Jurists)

...Having known him and cooperated with him for many years, I have nurtured for him the highest esteem and a great respect for his intelligence, his devotion to human rights and his leadership...

Maxime Tardu

...We have learned so much from him and he will live on in our memories as an example to follow in our struggle for the respect of all human rights whether civil and political or economic, social and cultural....

Fédération internationale Terre des hommes

Niall MacDermot, A Life Exemplifying Courage and Vision

*Ustinia Dolgopol**

Niall would have been startled by the idea that he was a mentor. Yet reflecting on the eulogies at the Memorial Ceremony held on 17 April 1996, and my own experiences, his greatest legacy will be the generation of people who were inspired by him because of his courage, wisdom, tenacity, and vision. Niall believed in the ability of humankind to reform itself. Throughout his years with the ICJ he worked ceaselessly to create international standards which could be used to change laws and practices at the national level. He understood the necessity of involving a wide range of individuals and organisations in the attainment of his goals. He was committed to education as a means of assisting people gain an understanding of the importance of human rights to their lives.

When Niall first arrived at the ICJ the organisation was undergoing major financial difficulties and there were those who would have opted to close the doors. But Niall insisted that the organisation should be allowed to continue and pursue its unique role as a non-governmental organisation composed of jurists and dedicated to the Rule of Law. It was Niall's vision and wisdom that allowed him to grasp the importan-

ce of highlighting the indivisibility of civil and political rights and economic, social and cultural rights. It was his partnership with Mr. Kéba Mbaye that led to the ICJ push for recognition of the right to development. The series of seminars on development and human rights helped the organisation to build its credibility in the developing world and eventually culminated in the adoption of the UN Declaration on the Rights to Development.

Perhaps it was Niall's recognition of the failings of human nature that made him so committed to the importance of education in the promotion and protection of human rights. His own wartime experiences caused him to witness extremes of human behaviour and conclude that the majority of us are capable of violating the rights of others in extraordinary circumstances. From this grew his belief in the importance of education and the inculcation of ideals as tools to assist people in controlling the impulses which lead to human rights abuses. Connected to this was his conviction that governments had to be made to understand the importance of human rights to the advancement and continued moral growth of their countries.

* Ustinia Dolgopol is Senior Lecturer in Law, School of Law, Flinders University of South Australia and formerly Director of the Centre for the Independence of Judges and Lawyers (1982-1987).

One of my enduring memories of Niall was his commitment to equality. He had a profound understanding of the essential equality of all people and the ability of people everywhere to engage in conduct which was both good and evil. This viewpoint pervaded the work of the ICJ. Unfortunately there are those engaged in human rights work who only see human rights violations in societies different from their own. Niall was able to understand the strengths and weaknesses of the varied countries he worked in and never assumed that there was a "right" way to approach a problem. It was my impression that this was one of the qualities that enabled him to work with people from such disparate backgrounds. His views are eloquently stated in the speech he gave before the European Parliamentary Assembly in January 1981 [which is reproduced in the second part of this issue of the *ICJ Review*] when accepting the award of the first European Human Rights Prize on behalf of the ICJ:

"Both the formulation and achievement of human rights is a continuing and dynamic process. There is no static and universal model. Human Rights in different parts of the world can be assessed and promoted only within the context of the societies concerned, with their different cultural heritage and economic and social systems. We seek to be

sensitive to these differences, and not to impose a purely European or Western concept of human rights."¹

Niall is one of those who brought about a fundamental change in the human rights work of the United Nations, in particular the role of non-governmental organisations in the formulation of human rights standards. He worked with individuals and organisations to bring a greater focus to the work of the UN Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. His integrity assisted all non-governmental organisations in gaining access to the meetings of working groups created by those bodies and having their viewpoints taken seriously. Various mandates for Special Rapporteurs were created through the urgings of the ICJ under Niall's leadership. It was also through his efforts that non-governmental organisations were able to become "players" in the adoption of new international standards in the field of human rights. Those who participated in the debates at the United Nations through the 1970s and 80s constantly remarked on the fundamental changes taking place within the United Nations. It is unfortunate that there has been in the 1990s an attempt to curb the influence of non-governmental organisations.

1 MacDermot, N., "Speech before the European Parliamentary Assembly on the occasion of the award of the first European Human Rights Prize" reprinted in (1981) 8 *ICJ Newsletter* 39 at 41 and in Part II of this issue of the *ICJ Review*.

This trend is all the more troubling in light of the words of the former Secretary-General of the United Nations, Mr. Pérez de Cuellar:

"The very core of the concept of sovereignty is regulated by international standards. Let us recall in this connection the stirring words of Article 21 of the Universal Declaration of Human Rights, which proclaims: 'The will of the people shall be the basis of the authority of government ...

"The international standards thus prescribe that sovereignty shall reside in the people and that governments shall pursue strategies of governance aiming for the realisation of human rights - strategies of governance that should never involve departures from fundamental rights. ..."²

Niall never lost sight of that concept in all the years he worked at the ICJ. He continued to remind the international community that non-governmental organisations represented the people and that their voices must be heard if progress were to be made in the protection and promotion of human rights. Throughout his years at the ICJ he assisted those who had been subjected to human rights violations to gain access to the human rights fora of the United Nations and did all he could to ensure they would be heard. One of the hallmarks of Niall's integrity was his willingness to take up causes which

were unpopular or would make him the subject of unfounded rumour and innuendo. He never wavered from his purpose and almost invariably the international community came to realise the truth in his words. I will never forget the silence that would descend on the meeting room of the Commission on Human Rights as soon as the delegates recognised his voice. The otherwise noisy and chaotic room would become still; the respect for Niall was almost tangible.

During his term of office, Niall took up a wide variety of causes; these ranged from the rights of those having a mental disability to torture to the right to development. The numerous editions of the *ICJ Review* published during his tenure in office contain material on human rights violations from all around the globe.

In the following pages I highlight four of the issues that Niall devoted himself to during his time as Secretary-General of the ICJ. By focusing on only a few issues I have been able to use some of Niall's own words in order to demonstrate his moral strength and tenacity. It is these qualities which made him such a remarkable man.

The Right to Development

After 14 years of struggle a Declaration on the Right to Development was adopted by the UN General Assembly on 4 December

2 Commentary, "Perez de Cuellar Discusses Sovereignty and International Responsibility" (1991) 47 *ICJ Review* 24 at 25.

1986. The push for the recognition of such a right began in 1972 with a speech delivered by Mr. Kéba Mbaye, then President of the Supreme Court of Senegal, entitled "The Right to Development as a Human Right."³ In 1978 the ICJ along with the *Association sénégalaise d'études et de recherches juridiques* organised a colloquium on development and human rights for the francophone countries of Africa. This meeting took place in Dakar. Participants were provided with a comprehensive paper prepared by Mr. Kéba Mbaye who was then President of the ICJ and later a member of the International Court of Justice. During this seminar the participants put forward a series of recommendations and conclusions which were transmitted to the heads of all francophone African countries south of the Sahara.

The foundations for the principles which became part of the UN Declaration on the Right to Development were laid at this colloquium. Among the observations of the delegates were the following:⁴

- Development is not only an economic process but is a process of national growth taking into account all dimensions of the life of the population and must include respect for human rights. A violation of fundamental liberties is a serious infringement of the right to develop-

ment and can never be justified by the desire of a government to foster economic growth.

- It is the obligation of governments to ensure that all members of their population have access to the fruits of development. In addition all of the population must be able to participate freely in debates concerning the process of development.
- The right to development is based on the need to obtain justice at both the national and international level. It is a right having both domestic and international application. It is a right which is both collective and individual.
- At the international level the right to development implies that there will be peaceful coexistence among countries and that the international economic system will operate in a manner that is more just so that all peoples as well as every individual can benefit from the common patrimony of humankind.

Two years prior to the Dakar seminar the ICJ began a series of seminars on the rights of the rural poor. The first such seminar was held in Dar Es Salaam in 1976. This work of the ICJ continues today and seminars have been held throughout Africa, Asia and Latin America. The conclusions and recommendations of the early seminars highlighted the existing injustices being

3 A description of the efforts to have a UN statement on the right to development is contained in O'Donnell, D., "The Right to Development, Human Rights and the New International Economic Order" (1982) 15 *ICJ Newsletter* 32.

4 A press release summarising the discussions is reprinted in (1979) 1 *ICJ Newsletter* 44. The outline of the discussions contained in the text is the author's translation from this press release which was issued in French. Any mistakes in meaning are the fault of the author.

suffered by those in rural regions, who were most often the poorest of the poor. Many of the statements made at these conferences dovetailed with the work being undertaken in connection with the right to development. At almost all of these seminars the participants raised the connection between civil and political rights and economic, social and cultural rights. Typical were the following observations made at the Bogota Seminar on Human Rights in the Rural Areas of the Andes Region which the ICJ co-sponsored with the *Consejo Latino Americano de Derecho*:

"In most areas of the Andean region civil and political rights are severely curtailed, it often being claimed by the governments concerned that this is necessary in the interests of promoting economic development. The participants at the seminar did not share this view. On the contrary, in their conclusions and recommendations they stated that the failure to promote economic and social rights more successfully in the rural areas was largely due to the repression of civil and political rights and the denial to the rural population of the right to participate in the formulation and application of agricultural and development policies which concern them."⁵

Over the years Niall strove for the international recognition of a human right to development. He pushed for the creation of a body to elaborate the essential principles of such a right. Eventually the Commission on Human Rights established the Working Group of Governmental Experts on the Right to Development which was charged with drafting a declaration on the Right to Development. The ICJ was an active participant at the Working Group. One of the major documents before the group was the ICJ report on the Hague Conference on Development and the Rule of Law. The conference was held during 1981; "[p]articipants included Members and Honorary Members of the Commission, representatives of the national sections and a number of development experts, including economists and political scientists as well as lawyers. ...The conference considered, *inter alia*, the concept of the 'right to development', participation in the formulation and application of development policies, self-reliance in development strategies, agrarian reform, and the role of lawyers and legal assistance in development."⁶

Given the vagaries of UN deliberations it would be fair to say that the ICJ was not always ecstatic about the positions being adopted in the Working Group; in 1982 the ICJ submitted an alternative draft text to that elaborated by the Working Group. This submission helped to refocus the efforts of the Working Group.

5 "ICJ Activities: Bogota Seminar on 'Human Rights in the Rural Areas of the Andes Region', 6-11 September" (1979) 2 *ICJ Newsletter* 3.

6 "ICJ Activities: Hague Conference on Development and the Rule of Law, 1981" (1981) 9 *ICJ Newsletter* 1. A summary of the conclusions as well as the discussions of the conference was published as Appendix A in the same Newsletter.

As with all texts adopted by the United Nations, the Declaration on the Right to Development was the result of a series of political compromises. However it remains important as the first international human rights declaration which gave credence to the concept of a human right to development which addressed itself to the rights of individuals, communities, societies and peoples. It brought to the fore a concept of human rights which emphasised the interdependence and indivisibility of all human rights and placed a burden on States to put into place policies and practices which benefited an entire population rather than a select few. It also highlighted the connection between development policies and the protection of human rights, calling on the international community to ensure that this connection was reflected in the policies and practices of international organisations as well as individual countries. These principles would not have been as clearly articulated were not for Niall's commitment and tenacity.

Torture - The European Convention for the Prevention of Torture and the UN Convention on Torture

As noted in the introduction Niall was a passionate believer in the necessity to put in place systems that could prevent human rights violations from occurring or at least would act as a deterrent. His efforts in the struggle against torture centred around the

necessity for creating systems which would be effective in monitoring governments and the practices they followed in all places of detention.

During the summer of 1978, the ICJ along with several Swiss lawyers, who were later to form the Swiss Committee Against Torture (known since 1992 as the Association for the Prevention of Torture-APT), prepared a Draft Optional Protocol to the then Draft Convention on Torture. The Draft Convention on Torture had been put forward by the Swedish government and had been taken up by the UN Commission on Human Rights. The idea of an optional protocol originated with Mr. Jean-Jacques Gautier, a retired Swiss banker, and was based on experience with the International Committee of the Red Cross.

The protocol called for the creation of an international committee to be composed of independent experts. This committee would have "the power to send delegates on a regular basis and on other occasions as required to visit places of detention of any kind in the territory under the control of the Member States."⁷ The protocol adopted the proverbial carrot and stick approach. The findings and recommendations of the visiting team would not be made public unless unresolved differences remained. The deterrent effect of the system would result from the ability of the Committee to visit any place without notice on the basis of information received from any source. It was hoped

7 "ICJ Activities: Report on the ICJ Draft Optional Protocol to the UN Draft Convention on Torture" (1979) 19 *ICJ Newsletter* 4 at 4.

that the privacy of the system would encourage governments to rectify any adverse situation in order to avoid the negative publicity that would result from the publication of the Committee's findings.

The initial efforts of the ICJ and the Swiss Committee Against Torture were aimed at convincing the Member States of the UN that the protocol should be adopted at the same time the Convention was open for ratification. An intensive lobbying campaign was mounted. There were initial reservations about the idea; a number of countries worried that it would take longer for the Convention on Torture to be finalised if Member States were aware of the possibility of a protocol or had to negotiate the two texts simultaneously.⁸ In contrast to the reaction among Member States of the UN, the immediate reaction of a number of prominent non-governmental organisations was extremely positive; among the initial supporters of the protocol were the International Committee of the Red Cross, the World Council of Churches and Amnesty International.

Slowly support for the protocol grew and in 1980 the Government of Costa Rica submitted the text of the draft protocol to the UN Commission on Human Rights. At about this time the Council of Europe began to express its support for the

protocol. On 27 January 1981, the European Parliamentary Assembly gave its support to the draft protocol; this was the day before Niall was to accept the first European Human Rights Prize on behalf of the ICJ.⁹

Also motivating Niall's work in this area was his conviction that there was an inextricable link between militarism and human rights violations. During 1982 Niall wrote an essay entitled "Some Thoughts on Why People Torture" as part of a project to honour Jean Jacques Gautier on the occasion of his 70th birthday.¹⁰ In it he observed:

"There is overwhelming and convincing evidence that in the last 50 years torture has been systematically practised in nearly half the countries of the world, in all continents and under all systems of government. Short of assassination, most people would regard it as the worst crime that one human being can commit against another, and some would say that it is even worse than assassination. It is universally condemned, and almost universally denied by those who commit it." ...

"Although the sadistic element may play its part, I do not believe it to be fundamental. In my view that which makes it possible for so many law

8 A description of some of the responses received by the ICJ is contained in the report referred to in *Id.*

9 See "ICJ Activities: Council of Europe" (1981) 8 *ICJ Newsletter* 7 and Appendix B in the same Newsletter.

10 The essay is reprinted in (1982) 14 *ICJ Newsletter* 51 at Appendix D.

enforcement officials to practice torture is the militaristic and war-like atmosphere in which their activities are conducted. More often than not they are under strong pressure from their superiors to obtain results in a 'battle' against 'subversion' or 'terrorism' or some other perceived threat to the existing order. The suspects are, therefore, no longer regarded as citizens who have rights. Rather they are part of an 'enemy' which has no rights and which has to be overcome rapidly and at all costs. It is well known that the atrocities committed in civil wars tend to be more severe and more numerous than those in international conflicts. This tendency is reflected in the context of these 'wars against subversion.'"¹¹

It was perhaps fitting that the ICJ turned its lobbying efforts to Latin America as 'wars of subversion' were raging throughout the region during the 1980s. Despite the conditions in some parts of Latin America the ICJ did receive support from the Organisation of American States and a few Central and South American countries.

The next major step forward came in April 1982 when the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe decided to pursue the idea of establishing a system of visits to places of detention in line with the ideas of the

Draft Optional Protocol to the Torture Convention. The offer of the Swiss Committee Against Torture and the ICJ to prepare a draft text was accepted.¹² After extensive discussion and debate the Council of Ministers agreed to the text of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹³

In 1992, at the request of the Government of Costa Rica, the UN Commission on Human Rights decided to continue consideration of the draft optional protocol which it had submitted in 1980. A UN Working Group was established to that effect which held its fifth session in 1996. The ICJ and the Association for the Prevention of Torture (APT) are now fully participating in the Working Group.

There is little doubt that this next step in the implementation of human rights instruments will have a profound effect on the development of international human right law. The international community owes a debt of gratitude to Niall for his efforts in this area.

African Charter on Human and Peoples' Rights

Niall's commitment to and love for Africa was evident throughout his tenure as Secretary-General of the ICJ.

¹¹ *Id* at 51-54.

¹² See "ICJ Activities: Draft Optional Protocol to the Torture Convention" (1982) 13 *ICJ Newsletter* 2.

¹³ The text of the Convention is reprinted in (1987) 39 *ICJ Review* 51.

Early in his appointment he began to work with African jurists on the formulation of an African convention on human rights and creation of an institution for its implementation. The first concrete proposal for an African Commission on Human Rights "was put forward at the African Conference of Jurists, organised by the ICJ in Lagos in 1961.¹⁴ Little progress was made until the 1978 Dakar seminar on Development and Human Rights.¹⁵ One of the decisions taken at the seminar was to disseminate the conclusions and recommendations as widely as possible and to form a Follow-up Committee to carry out lobbying efforts in the region. Intensive discussions were held with francophone African Heads of State during 1979 with the Follow-up Committee receiving favourable responses from a significant number of them.

At the July 1979 meeting of Organisation of African Unity a resolution put forward by the President of Senegal calling for the preparation of a human rights instrument was adopted unanimously. The resolution, in its operative paragraph, requested the Secretary-General of the Organisation of African Unity to "organise as soon as possible in an African capital, a restricted meeting of highly qualified experts to prepare a preliminary draft of an

African Charter on Human Rights providing, *inter alia*, for the establishment of bodies to promote and protect human rights."¹⁶ Further discussions about the content of such a Charter took place during the UN Seminar on The Establishment of Regional Commissions on Human Rights with Special Reference to Africa held in Monrovia immediately following the OAU.¹⁷ The text was completed over the next two years. An African Charter on Human and Peoples' Rights was adopted by the 18th Assembly of the Heads of States and Government of the OAU in Nairobi in June 1981. However it then took five years to obtain the requisite number of ratifications.

Watching the slow progress Niall decided to organise a meeting of respected African jurists to consider means for encouraging the ratification of the Charter. A seminar entitled "Implementation of Human Rights in Africa" was held from 2-4 December in Nairobi. A number of strategies were developed during the seminar and those attending adopted a formal resolution calling on African States which had not yet done so to ratify the Charter. At the time the seminar was held there had been 15 ratifications. Within the year 26 countries had ratified allowing the Charter to come into force on

14 See "ICJ Activities: African Commission on Human Rights" (1979) 2 *ICJ Newsletter* 4.

15 The work of the Dakar seminar and the formation of delegations to visit Heads of State is described in "ICJ Activities: Missions to African Heads of State: Dakar Seminar Follow-up" (1979) 1 *ICJ Newsletter* 3.

16 *Supra* note 14 at 4-5.

17 *Id.* at 5.

21 October 1986. By the time it entered into force 31 of the 50 eligible countries had signed and ratified the Charter.¹⁸ The first session of the African Commission on Human and Peoples' Rights took place on 2 November 1987.

The ICJ continues, under the leadership of Mr. Adama Dieng, to take an active interest in the work of the Commission. It is a testament to the dedication and perseverance of the ICJ that non-governmental organisations are now included in the meetings of the Commission and are able to address it on issues pertaining to human rights in Africa.¹⁹

As with so many of his other efforts Niall has left a lasting legacy which will serve hundreds of thousands if not millions of people, few of any who will know his name. One of his greatest attributes was his willingness to work for a cause without concern for personal aggrandisement.

The Centre for the Independence of Judges and Lawyers (CIJL)

This initiative has had such a profound impact on my own life that it is difficult to know where to begin. The motto of the ICJ is the Rule of Law, and over the years the ICJ has developed that concept so that it encompasses both the content of the law as well as its

procedural application. However, the furtherance of the Rule of Law is dependent on the existence of an independent judiciary and assumes the presence of a legal profession able to carry out its responsibilities without fear of reprisal. Unfortunately this is not the case in many countries throughout the world. Because of the frequency and the horrifying severity of attacks on judges and lawyers in some parts of the world, Niall, along with some of the members of the Commission, decided that a separate entity should be formed to publicise attacks on judges and lawyers and work for the creation of international standards in this field. It was hoped that, by separating this work from the other work of the ICJ, individual lawyers and bar associations would assist in efforts to promote the rights of their colleagues elsewhere in the world.

The creation of the CIJL was a natural outgrowth of Niall's concern to bolster mechanisms that can control the systematic abuse of human rights. Independent judges and lawyers are crucial to the promotion and protection of all human rights. Torture and detention without trial become commonplace in countries where there is no effective access to the courts. Discrimination in all its forms remains present to a much larger degree in societies where judges are not able to render decisions against the State and where lawyers are harassed or persecuted for defending unpopular causes or where the State denies access to effective legal services.

18 An overview of the work undertaken as a result of the Nairobi seminar is contained in (1986) 31 *ICJ Newsletter* 1. A report of the Nairobi conference including an overview of the African Charter by then Judge Kéba Mbaye was published by the ICJ in 1986.

19 See "Commentaries: African Commission on Human and Peoples Rights" (1991) 47 *ICJ Review* 51.

From its inception in 1978 the CIJL worked to notify colleagues of urgent situations, drawing on the example of Amnesty International's Urgent Action appeals. Initially the CIJL referred to these appeals as Circular Letters, later the name changed to "Alerts". Soon after its birth the CIJL began to publish its own journal which highlighted problems being faced in individual countries and included commentaries on global situations. In an effort to keep lawyers and judges informed about activities being undertaken in this field the CIJL Bulletin also contained information on the activities of bar associations and other pertinent associations of lawyers. Over the years it developed good working relationships with the International Bar Association, the Union of Arab Jurists, LAWASIA and the American Bar Association.

Because of the vital role the judiciary and the legal profession play in the promotion and protection of human rights, the CIJL quickly moved for the establishment of international standards to serve as guideposts for the proper ordering of relations between the executive and legislative arms of government on the one hand and the judiciary on the other, as well as between the State and the legal profession. Initially these efforts were directed primarily at the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities which had previously undertaken a study entitled *Equality in the Administration of Justice*.²⁰

In 1980, Mr. L. M. Singhvi was appointed by the Sub-Commission as Special Rapporteur on the Impartiality and Independence of the Judiciary, Jurists and Assessors and the Independence of Lawyers.

In order to assist the work of the Rapporteur the CIJL, in conjunction with the ICJ and the International Association of Penal Law, organised two seminars on the subject matter of the Special Rapporteur's mandate. The first, on the independence of the judiciary, was held in Siracusa in May 1981. This was followed in 1982 by a seminar on the independence of the legal profession. Both seminars were attended by a group of eminent jurists representing the various legal systems of the world. In addition, an effort was made to ensure geographic representation. The conclusions and recommendations of these seminars were published in the *CIJL Bulletin* and were also widely circulated in a CIJL mailing to lawyers and organisations of lawyers and judges. The conclusions and recommendations were also made available to the members of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

While the work of the Special Rapporteur was continuing, the UN Committee on Crime Prevention had determined that standards relating to the independence of the judiciary and the legal profession were crucial to its

20 This report is described in (1973) 10 ICJ Review 573

work. The Committee, through the personnel at the Crime Prevention Branch in Vienna, began looking at the possibility of having standards adopted through the mechanism of the UN Congress on Crime Prevention and Control held every fifth year. It was decided to proceed first with standards concerning the judiciary. During the 7th Congress in 1985 there were extensive debates on the proposal put forward by the Committee on Crime Prevention. At the closing plenary session a text entitled "UN Basic Principles on the Independence of the Judiciary" was adopted unanimously by the Congress; this text was endorsed by the General Assembly later that year.²¹ The content of the Basic Principles is very similar to the standards adopted at Siracusa.

Immediately following the adoption of the Basic Principles, the CIJL and the ICJ determined that they had to be widely publicised and that jurists in all parts of the world should consider how they could be given effect in their own regions and countries. The Principles were disseminated to all organisations in regular contact with the CIJL and were also published in its Bulletin. Beginning in 1986 seminars were organised in Latin America, Africa, and Asia. The purpose of the seminars was

to bring together judges, lawyers, government officials and academics to consider how best to implement the Basic Principles at a regional and domestic level. The conclusions and recommendations of each of these seminars have been published by the CIJL.

At the 8th Congress, the Basic Principles on the Role of Lawyers were adopted. These also have been widely circulated by the CIJL and have become a focus of its seminar programme.²²

Throughout his period in office Niall continued to give support to the work of the CIJL and regarded it as an essential component to the human rights work of the ICJ. The CIJL has had five Directors each of whom has contributed to its overall success. Niall encouraged each of them to develop new initiatives and to be creative in pursuing the goals of the CIJL. The present Director, Mona A. Rishmawi, has given the CIJL a new focus. It undertakes more sustained research and has been able to carry out a greater range of investigative missions. The breadth of its publications has increased; instead of the *Bulletin* the CIJL now publishes the *Yearbook* and the annual *Attacks on Justice: The Harassment and Persecution of Judges and Lawyers*.

21 The UN Basic Principles on the Independence of the Judiciary are reprinted in (1986) 37 *ICJ Review* 62.

22 A compilation of the international standards as well as other important documents in this field have been published by the CIJL. See "The Independence of Judges and Lawyers: A Compilation of International Standards" (1990) 25 *CIJL Bulletin*.

The 1995 volume of *Attacks on Justice: The Harassment and Persecution of Judges and Lawyers* is dedicated to Niall; the words of homage it contains are a fitting finale to this essay:

"It is his vision, integrity, strength, and utmost respect for legality, that inspired us all. He taught us how to stand up in defence of justice."

...Sri Lanka was among the beneficiaries of the standards and quality of the work of the ICJ under Niall's leadership. In the 1980s, there were the excellent ICJ missions and mission reports of Virginia Leary and Paul Sieghart, and the historical trial observation mission by Lord Hooson QC, when our own leading lawyer S. Nadesan QC, was charged in respect of an article he wrote for the Civil Rights Movement. We are happy to say that such work continued after Niall's retirement....

Suriya Wickremasinghe
(CIJL Advisory Board Member, Secretary,
Civil Rights Movement)

...Our husbands worked together for a very long time on a most important project which, step by step, came to fruition, and I know that your husband's advices were precious to mine....

Catherine Gautier
[wife of Jean-Jacques Gautier who worked
with Niall MacDermot on the European Convention
for the Prevention of Torture for many years,
addressing Ludmila MacDermot,
wife of the late Secretary-General of the ICJ]

Niall MacDermot: A Passion for Justice

*Alfredo Etcheberry**

So many affectionate recollections and deserved praise have been bestowed on the memory of Niall MacDermot that I will only try to convey my personal remembrances of a sincere friendship.

I met Niall in 1974, in Chile, only a few months after the military coup that brought to power in my country a military dictatorship quite alien to our national traditions, which ruled with the utmost harshness for too long a time and outrageously violated human rights and the independence of the judiciary. At that time a Chilean member of the International Commission of Jurists had just resigned and Niall discreetly sounded me out on my availability to fill the vacant post in such difficult circumstances. I accepted, and I never had cause to regret my decision in the ensuing years. I was not fortunate enough to enjoy a near contact with Niall for such a long time and through such an intimate attachment as other friends and members of the Commission that have made Niall's eulogies. But I had the privilege of having him as a guest at my home several times and to share his table and his engaging conversation in Geneva and other parts of the world during many years. He always showed me a particular affection and I enjoyed his

continuous support to be reelected as a member of the Commission for the longest term the Statutes allow and to be appointed an Honorary Member after the expiration of my active membership. His conversation reflected his great culture and the most human features of his character at the same time: his unaffectedness, his interest for the people surrounding him and his enjoying the simple pleasures of an agreeable table, a lively talk and the mutual exchange of recollections and projects that have the virtue of making men happy.

Indeed, Niall's personality was immensely attractive. I will merely mention those qualities that endeared him most to me: his gentleness, his clear mind, his passion for justice and his unflinching courage.

His courteousness was evident in his polite patrician demeanour and the respect he invariably showed towards his colleagues and his subordinates. That was not at all inconsistent with the courage of his convictions. When he deemed it important, his voice could become rough and his words incisive, but never insulting, and always at the service of the noblest causes where there was no room for compromise.

* Alfredo Etcheberry is an Advocate, Professor of law at the University of Chile (Santiago) and Honorary Member of the International Commission of Jurists.

His clear vision of the human race as only one great people made him project the Commission farther than the European boundaries and multiplied his visits to other continents and his personal links with people of all nationalities. The catholicity of the Commission's membership was due to a large extent to the efforts and persuasive suggestions made by Niall. During his tenure as Secretary-General the Commission became truly international.

His diplomatic gifts and his unimpeachable credentials in the fields of politics and the Bar made his relations with governments easy and earned him the trust of ordinary people. Every fighter for human rights in the whole world became to know for sure that Niall MacDermot was his friend and the Commission his ally. The high distinctions that the Commission was awarded during Niall's secretaryship were also a tribute to the man that was generous enough to leave his country and to waive a bright career at the Bar and the Bench in order to spread through the whole world in an indefatigable fight, the prime of his personality.

He perceived earlier than most that the cultural, social and economic rights were no less important than the civil and political ones; that the easy access of the poor to the courts of justice was the only way to ensure that their rights did not become a dead letter or a cruel

joke, and that without independent judges and courageous lawyers those rights would always remain an unreal dream.

His permanent concern for the access of poor people to justice was shown in the numerous meetings and seminars on the subject, particularly with regard to the peasants living in remote rural areas. I can quote as an example the meeting held in Bogota, Colombia, out of which and with the sponsorship of the International Commission of Jurists, the Andean Commission of Jurists was born, currently in full activity and enjoying great prestige in the region.

His strong conviction of the importance of a truly independent judiciary and of lawyers free from harassment and threats led to the creation of the Center for the Independence of Judges and Lawyers, an eager watcher of the respect for the Rule of Law, of due process and a free defence not hindered by unfair pressures or even actual restrictions of the lawyer's personal liberties.

It has been written: "We live as long as our dear dead live". Niall is for us a beloved dead, that lives and keeps us alive. I am sure he is still watching us, supporting us and praying for us and for the Commission he cherished and served so much.

A Tribute to Niall MacDermot

*Timothy Harding**

I would like to share with you one afternoon which I spent together with Niall MacDermot visiting a large mental hospital about 30 kilometres outside the centre of Osaka.

This was during a mission of the ICJ, investigating major abuses in private Japanese mental hospitals which had been brought to light by jurists in Japan. So I speak to you as a medical doctor. As we set off on this mission, not an easy one, I was confident that Niall would be at his best during the discussions in the corridors of power in Tokyo, in the Ministry of Justice and the Ministry of Health and Welfare, the Ministry of Foreign Affairs and with the two Bar Associations.

Niall MacDermot was an enormous support and influence in those initial and final discussions. But what surprised me as a doctor was how enormously effective and sympathetic he was during our visits to hospitals. Imagine an overcrowded mental hospital with more than 1,000 patients in a very small area, combining all the worst features of the most overcrowded prisons with the worst abuses in the world, and in addition, the suffering of chronic mental illness. Niall, together with our

interpreters, did not hesitate to entering into contact and discussing with the patients in this hospital and other hospitals, at great length, showing respect, patience and understanding and seeking to understand what had happened to these persons to bring them to a state of degrading treatment in this hospital.

We spent an afternoon that was to start at 13.30 and that was meant to finish at 17.00 - but we left the gates of that hospital late that evening, well after 21.00. And it was thanks to Niall's copious notes about his discussions with men and women in that mental hospital that we were able to bring to the attention, not only of a few jurists in Japan who had recognised that problem but to the whole government establishment and health establishment and colleagues working in the faculties of medicine in Japan, the abuses that existed at that time and also to introduce measures to combat these abuses. So as a professor of medicine and as a colleague in that mission, I would like to render homage to Niall's skill in such a difficult situation and the respect that he showed for another twin profession, that of medicine.

* Timothy Harding is a Professor of Medicine (Institut de Medecine Légale, Geneva) and was a Member of the Mission of the International Commission of Jurists, held in April 1992, to report on the human rights of psychiatric patients, in Japan.

...He will leave a great void in the NGO community he so brilliantly led for more than a quarter of a century. It is owing to his intellectual and moral calibre that our community has been able to make its voice heard increasingly in various international fora. It is impossible for me to make a list of all his pertinent initiatives, all the reforms he managed to carry through, all the benefits he managed to obtain for NGOs, not even to mention the prestige and the respect his leadership gave to the ICJ....

Abderrahman Youssoufi (Union of Arab Lawyers)

...Niall was a towering figure in the campaign for human rights. His strong foundation allowed him to stand his ground in face of the ever-shifting winds of political expediency. A man of privileged upbringing and aristocratic bearing, he understood that the only ones who can liberate the poor are the poor themselves, and much of his work was devoted to giving them the legal tools to do so. On a personal level, it was Niall and his understated style who taught me, more than anyone else, how to be an effective human rights advocate....

Reed Brody (former ICJ Executive Secretary)

Memories of Niall MacDermot

*Justice Michael Kirby**

Niall MacDermot had a family connection with Australia. In his later years, he was always talking about returning to Australia. Unfortunately, ill health overtook him and this ambition was not fulfilled. It was left to his successor, Adama Dieng, to complete the journey he had promised.

When I received, and accepted, the invitation to join the International Commission of Jurists (ICJ), I took the advantage of an early visit to Geneva to meet the redoubtable Secretary-General of the ICJ. He greeted me at the airport, took me on a tour of Calvin's austere city and then brought me to the small residential villa in which the ICJ was then housed. I remember the strong impression which he made on me in this first encounter. He was, even at that time, a handsome man with an air of authority. His hair was wholly grey. He had that incisive mind of an educated Englishman and the clear, precise, clipped voice that often goes with it. Yet this was not a post-colonial relic of a faded Empire on which, I was assured in my youth, the sun would never set. On the contrary, this was an internationalist with a real commitment to the building of a global legal order in which the ideals of the United Nations would be converted into practical reality.

Niall MacDermot talked of his strong commitment to bringing the Rule of Law to disadvantaged and post-colonial people. His keenest attention was focused upon Africa but with Latin America not far behind. His engagement in Asia (where many of the worst abuses of human rights occur) was less enthusiastic. There was only so much that a mind could encompass and that the limited resources of the ICJ could tackle. Niall MacDermot was especially acquainted with the terrible wrongs which had occurred in colonial and post-colonial Africa. He was keen, by work in Geneva and work far from there, to encourage the three causes of the ICJ but with a special African focus: defence of the Rule of Law, upholding human rights and safeguarding the independence of judges and lawyers.

To say that I was impressed by this doyen of the human rights movement would be a serious under-statement. He was one of those people who are immediately impressive. Yet he was quiet and measured in his utterances. One derived that immediate conclusion that here was a steely will, a flexible mind, a persuasive and eloquent tongue and a deep commitment to the causes for which the ICJ stood. To a very large extent, particularly in Geneva where his presence

* The Honourable Justice Michael Kirby AC CMG, is President of the International Commission of Jurists and Justice of the High Court of Australia.

was so keenly felt in the *Palais des Nations* and the United Nations agencies, Niall MacDermot became the face of the ICJ. He was so impressive in mien and in presentation that, inevitably, some of his grace, intelligence and style rubbed off onto the ICJ. Fortunate was the organisation to have, for so long, such a dedicated and charismatic representative.

I saw Niall MacDermot at work at the triennial meetings of the ICJ in Nairobi, Kenya, and in Caracas, Venezuela. He worked closely with the then Chairman of the ICJ Executive Committee (Mr. William J. Butler). They obviously had a warm, personal relationship; yet each was his own man. Each had the measure of the other. Each respected the office which the other held. When I was elected to the Executive Committee in Caracas, I came to know Niall MacDermot much more closely. The record of the organisation shows that there were some aspects of his administration of the ICJ of which I was critical. This is not said here in any way to diminish his stewardship. Perhaps the differences were cultural, perhaps generational. In many ways, Niall MacDermot represented the best of the British tradition in administration. As a child of a legal culture which is overwhelmingly derived from that of England, I was all too well familiar with the great strengths and occasional weaknesses of that tradition. The strengths do not need to be repeated. There is no doubt that the Anglo-American dominance of the world in the immediate aftermath of the Second World War had a profound effect on the post-World War II endeavour to defend the causes for which the ICJ

was founded. The language of the *Universal Declaration of Human Rights* and the *International Bill of Rights* is specially familiar to lawyers of the common law tradition. To a very great extent these instruments are written in a language with which Niall MacDermot, one of Her Majesty's Counsel learned in the law and I, were well familiar.

Yet, a weakness of public administration in the United Kingdom remains, in my opinion, its embrace of the high ideal of service by an elite and its disinclination to accept the value of transparency and involvement of others. In his closing year, I must often have irritated Niall MacDermot because of my repeated calls for a more transparent administration for the ICJ in Geneva and involvement of the national sections and affiliated organisations, far away. I had voiced these opinions at Nairobi. I repeated them at Caracas. Perhaps because some members (and certainly many in the sections and affiliated organisations) supported my ideas of greater transparency, I was elected to the Executive Committee. But Niall MacDermot remained an administrator of the old school. In this respect, he was entirely true to himself and to his beliefs. He did not really see great utility in publicising the financial records of the ICJ, even when these might disclose the predicament for which the organisation needed assistance from Nation States, donors and sections and affiliated organisations. In my conversations with Niall MacDermot, I often gained the impression that he regarded the sections and affiliated organisations as bodies from whom unquestioned loyalty was expected for the decisions made in Geneva. The energetic activities of the Australian Section often

stepped on his toes. They occasioned strongly expressed protests to the Section voiced through me. Not a few of these protests were justified. Niall MacDermot was a staunch defender of the prerogatives of the Secretariat of the ICJ in Geneva and of the Commission. As for closely involving the sections and affiliated organisations, he was less enthusiastic. Doubtless some of his reservations derived from the limited resources of the ICJ and the difficulty of maintaining daily contact with so many far-flung bodies associated with its international mission.

On one of my journeys to Geneva when I was serving as a member of the Executive Committee, he took me apart. He told me candidly, of his anxiety about his failing memory. He was then, of course, of a great age. But I had noticed no significant instance of lack of mental acuity on his part. That remarkable instrument, his brain, still seemed to me to work with its established skill. Yet Niall MacDermot was coming to the view that he could not discharge his duties to the high standards which he had set for himself. It was his ultimate gift to the ICJ that he recognised this and insisted that the Commission find a successor. How many distinguished, senior executives of his calibre would have taken that step? I am convinced that it was taken out of self-respect but also out of his great devotion to the ICJ which had become the wellspring of his professional life.

As governors are wont to do, the Executive Committee of the ICJ was a little slow and unsure in the steps to be taken to find a successor to Niall

MacDermot. He continued to serve with distinction and with only rare instances of loss of total command. He remained a most congenial host when the Executive Committee met in Geneva. When, as is inevitable and healthy, differences sometimes arose in the Executive Committee, he rode them out, remembering that his service was to the Commission and not to the transient personalities who sat around its table. In this, as in all things, he was a true professional. But he maintained his insistence that his time had come to depart and that we should get on with the job of finding his successor. Eventually that choice fell to Adama Dieng who was the first head of a major human rights organisation to be chosen from a developing country. He calls it the South but as someone from the real South, I prefer the old description. Other human rights organisations have followed. But the ICJ, with Niall MacDermot at the table, made the choice of an internal candidate whom, in many ways, Niall MacDermot had groomed for the position. He never overstepped the mark or pressed for the selection. To the very end, he was the model of propriety.

When Niall MacDermot retired, there were dinners and speeches of the appropriate kind. I gathered the distinct impression that he found all of this burdensome. He was not the kind of man to like praise. In fact, he resisted humbug in all of its forms. He was a no-nonsense man who sought to make his contribution and then to depart with the same grace and responsibility that he had exhibited throughout his service.

The Commission promptly elected Niall MacDermot to an exceptional position as one of its Members. He attended the Triennial Meeting in Cartigny, Switzerland, in this capacity. He showed loyalty to his old friends. But he was not about to damage the high reputation he had gained amongst all Members of the Commission. Nor was he about to divert the spotlight from his successor in whose achievements he took obvious pride.

I wrote to the Lord Chancellor of the United Kingdom suggesting that if any Englishman abroad deserved the honour of knighthood, it was Niall MacDermot. Instead, by the mystery of such things, he was promoted to be a Commander of the Order of the British Empire. He had previously been awarded a lower rank in that Order. By the time his post-retirement honour came, the British Empire had disappeared. There was something of an irony that this champion of newly independent countries, of every tradition and tongue, should be honoured by his own land in the way he was. He deserved more; although he never asked for nor sought it. But the real memorials to Niall MacDermot can be found throughout the world where the cause of the ICJ is still championed. They can be found in the normative development of human rights. They can be found in the corridors of the United Nations Offices in Geneva and New York. They can be found in the initiatives in the developing world, particularly in Africa, to spread principles of human rights and the Rule of Law and to develop the legal profession and paralegals so as to uphold the Rule of Law in practical

ways. They can be found in the high tradition of professionalism which still marks the work of the ICJ. They can be found in the ongoing commitment of the ICJ to the interconnection between civil and political rights (on the one hand) and economic and social rights (on the other). This was an interconnection which Niall MacDermot and William J. Butler rightly emphasised during the long period that they served together at the helm of the ICJ.

When the history of the human rights movement of the 20th Century is written, and historians trace the extraordinary development of international law and practical initiatives that began in the high ideals of the League of Nations, were seemingly dashed in war, Holocaust and nuclear explosions but rose again, phoenix-like in the United Nations, after 1945, the part of Niall MacDermot will be properly honoured. For a long time he and the ICJ were indistinguishable. In the end, his contribution was to leave the organisation a stronger, more principled and more professional place than he found it.

Now, new ideals and approaches are being adopted by the ICJ. That is the way it should be and the way Niall MacDermot would have expected. Those who have come after will necessarily leave their mark. But so long and distinguished was Niall MacDermot's service that his mark on the ICJ is indelible. It was a mighty contribution to human rights, the Rule of Law and the independence of judges and lawyers. His tall, distinguished graceful physical presence is no more. But his spirit is with us. And his work goes on.

*A Personal Tribute **

*Norman S. Marsh***

It is a great privilege for a former Secretary-General of the International Commission of Jurists to pay a tribute to one of his successors, the late Niall MacDermot, who died in Geneva in his eightieth year on 22 February 1996. I am perhaps in a good position to assess the magnitude of his achievement. Niall MacDermot was Secretary-General from 1970 to 1990, and in these twenty years, following and developing the work of his predecessor, Seán MacBride, broadened the objectives and widened the range of the Commission far beyond the expectations of the organisation's original founders.

On coming to the International Commission of Jurists, Niall left behind a career in which he had already won distinction as an Intelligence officer in World War II, and afterwards at the English Bar as a Queen's Counsel with formidable powers of advocacy. From 1957 to 1962 and from 1962 to 1970, he was a Member of Parliament, and in the Labour Administration of Harold Wilson held office as Financial Secretary to the Treasury from 1964 to 1967, and from 1967 to 1968 as Minister of State for Planning and Land. It was as Secretary-General of

the International Commission of Jurists in Geneva, however, and in meetings and missions all over the world to which he tirelessly travelled that his great gifts of intelligence, persuasive eloquence and diplomatic style were most strikingly demonstrated. It is possible that as a promising Labour politician of the 1950s and 1960s, who did not altogether fulfil the expectations aroused by his initial posting to the prestigious post of Financial Secretary to the Treasury, he may be overlooked by English political historians; but as a world champion of human rights he deserves a lasting fame.

The fundamental difference between the International Commission of Jurists when I came to the Commission in 1956 and as it is known today is that it then conceived of the Rule of Law as a concept involving formal legality and a correct procedure which was the special concern of lawyers in their different countries. So far as they went, these were legitimate goals and involved a shrewd judgment in technique in that lawyers in many countries of varying character exercised, and still wield, considerable influence in their respective societies. What has happened since then, and mostly under the guidance of

* An expanded version of an address at the Memorial Meeting for Niall MacDermot held in the *Palais des Nations*, Geneva, on 17 April 1996.

** Norman S. Marsh is an Honorary Member of the international Commission of Jurists (United Kingdom), and former ICJ Secretary-General, 1956-1958.

Seàn MacBride, and in an even greater degree under Niall MacDermot, has been a readjustment of aims, which were at first chiefly concerned with pointing out the failures to observe the Rule of Law in totalitarian countries, to an active concern with human rights generally, including economic and social rights.

William J. Butler, who was Chairman of the Executive Committee of the Commission for the greater part of Niall MacDermot's term of office and in a good position to appreciate his achievements in the field of Human Rights, in an address prepared for a Memorial Meeting for Niall at the Palais des Nations in Geneva on 17 April 1996, has especially emphasised his splendid record as a champion of human rights conceived in a broad sense, with the Rule of Law in its procedural meaning treated only as a means to the wider objective, albeit an essential one. Mr. Butler referred in particular to Niall's encouragement of movements fostering regional Charters of Human Rights, such as the Charter for Africa, and his concern for and personal visits to many areas where

Human Rights are at risk, such as the Middle East and Latin America. Among the many tributes to Niall MacDermot at the Memorial Meeting I also found particularly moving Adama Dieng's account of Niall MacDermot's visit to the present Secretary-General's native Senegal, and his discussion with villagers about the need of legal services for the rural poor.

But perhaps the side of Niall MacDermot's work which will be least known by the general public, but which will be highly regarded by anyone who has been responsible for raising the funds for the institution which he or she serves or served, is the support which he succeeded in obtaining from governments and institutions when the sources on which the Commission had formerly drawn were revealed and judged unacceptable. It also showed what a high level respect and confidence he enjoyed. It would be good if as a mark of respect for Niall MacDermot's life and work a Memorial Fund could be established to support one or more of the objectives of the International Commission of Jurists which he had particularly at heart.

Niall MacDermot: A Tribute

*Me François-Xavier Mbouyom**

Niall MacDermot is no more. With so many prominent human rights activists around the world as his friends, at this moment in time, when writing these lines of remembrance, I find myself suddenly filled with fear.

How can I in a few sentences recall, even summarily, all the great moments of such a rich life, and shed all the necessary light on his tireless struggle for the Rule of Law and his endless activities to serve justice, the mentally handicapped and the countless victims of inhuman and degrading treatments?

I was lucky enough to meet him for the first time in 1977, immediately after his official audience with the Head of State of Cameroon, President Ahmadou Ahidjo. He was part of a delegation of the International Commission of Jurists (ICJ) on mission to Cameroon. The Minister of Justice of Cameroon, who had been present at the audience, told me on the telephone about Niall MacDermot's wish to pay a visit of courtesy to our Supreme Court and demanded that I give him the best of welcomes.

His visit honoured me. Our discussions were most warm and friendly and concerned as much our draft Penal Code, the Rule of Law in a one

party State and the independence of judges, as the appreciation by our peoples of the administration of justice. Encouraged by my answers, Niall MacDermot suggested the establishment of an Ombuds-type institution which is considered in some countries as the best mechanism to protect citizens against abuses of power committed by the administration. I recall a statement he made then:

"In advanced democracies such as Sweden or France, the Ombudsman has been instituted because, more often than not, the citizen who complains about the administration, is convinced that the decision that has been taken against him is unjustified; but he lacks official recognition that he has been the victim of an arbitrary and inadequate decision. If the feeling of injustice continues, and if the citizen has no one to contact in this case, the gap between the authorities and the administered, between the States and citizens, can only deepen and result in the harbouring of resentment against governments to the detriment of progress and the development of society. Moreover, that feeling of injustice must be all the more felt in the

* Me François-Xavier Mbouyom, Advocate, is an Honorary Member of the International Commission of Jurists from Cameroon.

case of a citizen from a country such as yours, where access to justice is far from easy for a large part of the population. This institution would in such cases be particularly useful in allowing the examination of injustices which are inflicted upon citizens by all types of State organs, instead of leaving the aggrieved citizens to fall deeper into frustration and resentment against the ruling party and the government."

These discussions, which lasted more than two hours, gave of Niall MacDermot the image of a generous man with an open mind whose capacity and enthusiasm to sow constructive ideas compelled admiration.

Under his leadership, the International Commission of Jurists, after having patiently and courageously contributed to the adoption by the Member States of the Organisation of African States of an African Charter on

Human and Peoples' Rights - whose specifically African approach is likely to encourage further action destined to protect and promote human rights on our continent - is now undertaking to encourage the elaboration of other instruments which are likely to ameliorate the Charter's effectiveness. This is, for instance, the case for the projected additional protocol to the African Charter on Human and Peoples' Rights which has been recently submitted for consideration by the States at the next session of the Conference of Heads of States and Governments to be held in Harare (Zimbabwe) in July 1997.

Niall MacDermot never lost hope to see the Rule of Law flourish in Africa one day. He can "rest in peace", he can be assured that his work will not be in vain.

His faithful companion, Ludmila, who has been totally devoted to him may find solace in the unanimous regrets he leaves behind him.

From the Scrap-Book of Memory

*Fali S. Nariman**

During the 1940s when Sir John Latham presided over the High Court of Australia, it resolved many vexed problems of inter-State trade: the "Commerce Clause" of the Australian Constitution was invoked so frequently that when he retired (in 1951) Chief Justice Latham lamented: "when I die you will find S.92 engraved on my heart." Niall did not say anything so dramatic or rhetorical. He was a quiet soft-spoken person, not given to hyperbole. But all who had closely worked with him knew that (next only to his wife) the ICJ was closest to his heart. He lived, breathed and talked about - and only about - the ICJ.

Whilst delving into old files I recently came across some manifestations of his character which I would like to share with readers of this publication.

When a strong-willed person guides the destiny of an organisation for as long as Niall did, there are occasions when people around him begin to feel that he has arrogated almost all functions of that organisation to himself. So it appeared to a few in the second half of the 1980s.

I remember one such occasion in March 1986 when he was already

Secretary-General for more than 15 years. One of our colleagues on the ICJ Executive Committee criticised him about doing everything on his own. Niall refuted this criticism. He was a fighter. He wouldn't take anything lying down. His written response (I still have it with me in my files) was:

"I do, however, wish to ask in all sincerity why you think that I am not willing to delegate? I am not sure whether you mean delegate to other members of the staff, or delegate to national sections.

If the former, on what do you base the allegation? I have had to take on and train many young people in our work. When they are capable of handling things on their own I am only too glad to let them. For example, our recent mission to Sudan was organised entirely by Tina Dolgopol, including the raising of funds. I leave to her entirely the contents of the CIJL Bulletin.

If you mean delegate to national sections in the way you suggest in your paper, may I ask why you never put forward this suggestion before? Why did you wait

* Fali S. Nariman, Advocate, former Solicitor-General of India, Chairman of the Executive Committee of the International Commission of Jurists.

until the last day of your 15 year membership? Instead you seek to blame me for having prevented something, which no-one has proposed."

Generally polite and urbane, he could be caustic and fierce when anyone criticised him about his handling of the ICJ - an institution he loved nurtured and cherished for many long years.

In the late 1980s there was also criticism that too much priority was given to Third World countries in the programmes of the ICJ - despite the fact that the only effective national sections were located in Europe, in North America, in Australia and in New Zealand. Niall's response was typical of the man. It showed that though he belonged to the First World, his enthusiasm was always for the Third:

"I get the impression that you disagree with the priority given to Third World countries, and you suggest that the priorities are determined by me. This is not so. All our activities are decided at meetings of the Commission or of the Executive Committee. *I inherited this policy of giving priority to the Third World. I did not invent it.*

Naturally, many of the proposals for action come from the Secretary-General, as has always been the case. That is what he is paid to do, but the decision is the Committee's or the Commission's not his. By no means are all my suggestions accepted, nor do all the proposals come from me. On what do you base your assertion

that 'what is done depends on the priorities of one person'?"

And then, stung by some undeserved comments about fund-raising, Niall wrote:

"Unfortunately I now have a lot of experience of fund-raising. Our two main sources are governments and foundations. Both of them are deeply interested in our human rights work in the Third World, and that is why they give us the support they do."

In his comment circulated to the ICJ Executive Committee Members in 1986 he explained why Third World Issues were highlighted:

"The focus on Third World issues has been the policy of the ICJ for the last 30 years. The suggestion that the focus on Third World issues may be damaging to the credibility of the ICJ 'in those areas of the world where it is most active', presumably means where its national sections are most active. But national sections, though affiliated to the ICJ, are separate and quite independent of the ICJ. It is the Commission Members and the Executive Committee not the national sections who determine its policy. Activities of the national sections are not activities of the ICJ.

The important grants we receive from governments of Western Europe, North America,

Australia and New Zealand do not support the suggestion that our Third World focus is 'damaging' to the credit to the ICJ in these countries. Rather, it is more likely to be due to that focus that these governments support us. Lack of greater coverage of Eastern Europe, Arab and other Islamic countries and China is due to lack of access and lack of specialised staff. We do, however, include articles on these countries in the *Review* when we have some relevant information. We organised a Seminar in Kuwait on Human Rights in Islam; we have had seminars in Warsaw and Moscow; we have affiliated organisations in Tunis and West Bank; two years ago we sent a mission to Egypt and most recently to Sudan. We have made a number of approaches to China, but they are still smarting under our report on Tibet, alleging genocide which helped to keep their government out of the UN. We have made many applications to send observers to trials in Poland but, like all the Eastern European countries, they will not give us access. We have taken this up repeatedly with the USSR."

He received several awards and prizes on behalf of ICJ - particularly the European Human Rights Prize, the Erasmus Prize and the Wateler Peace Prize. In the Secretary-General's Report on Activities to the Nairobi Commission Meeting (December 1985) he could not repress his undiluted pleasure :

"Finally, we were surprised, pleased and honoured to be awarded the Wateler Peace Prize for 1984. *Surprised*, since with all our other activities, we have not been able to devote our time and energies to the peace movement. *Pleased*, because it is a recognition of the interrelationship between peace and human rights. All acts of aggression are a violation of law, human rights are always grossly abused in armed conflicts, and violations of rights can be a cause of armed conflicts. *Honoured*, because this prize is awarded annually by the Board of Trustees of the Peace Palace in The Hague. One year it is given to a Dutch citizen and in alternate years to an international individual or organisation. We found ourselves in distinguished company in receiving the award."

But the acme of distinction for him was the award to the ICJ of the Erasmus Prize for 1989. He was delighted - simply delighted - not only because it was a signal honour to receive a prize bearing the name of Erasmus, the greatest humanist of the Renaissance, but because of the grounds for granting it. The citation said:

"...because the ICJ does its utmost to foster the independence of the judiciary and the legal profession throughout the world;

...because the ICJ is unrelenting in its efforts to support national networks of jurists in order to defend and strengthen the 'Rule of Law';

...because the ICJ, notably in the Third World, provides knowledge and resources, through training and education to people and organisations defending the rights of the poor and deprived, thus enabling them to act more effectively;

...because the ICJ plays an important role in drafting and elaborating texts of international treaties in the field of human rights and makes a point of supervising enforcement of existing treaties;

...because the ICJ contributes to promoting and protecting human rights where these are in grave jeopardy through the delegation of research missions and publication of findings;

...because the quality and the objectivity of the ICJ is beyond all doubt, so that the ICJ has proved itself a worthy representative of the Erasmus tradition."

This recital of the manifold activities of the ICJ was also a recognition of the significant contribution of the ICJ Secretary-General himself - it was he who was a worthy representative of the Erasmus tradition. It is wonderful to behold in the "Premium Erasmus" the photographs of Niall when being congratulated by Prince Bernhard and when delivering his Acceptance Speech - child-like ecstasy is written all over his smiling countenance!

Niall MacDermot was not only a firm upholder of the Rule of Law; he

was also a man of compassion. Although the ICJ had not taken a definitive stand on the abolition of the death penalty, when an execution was imminent Niall was not found wanting in human qualities and gave vent to his feelings. When those convicted of the conspiracy to assassinate Prime Minister Indira Gandhi were to be hanged he sent the following message to the President of India on 4 January 1989:

"On behalf of the International Commission of Jurists, I am writing to urge a reprieve for Satwant Singh and Kehar Singh, condemned to death in connection with the murder of Mrs. Gandhi.

I enclose a document which has been sent to us summarising the evidence at the trial and commenting upon the doubts raised by this evidence.

In our respectful submission, the uncertainties and inadequacies of the evidence referred to indicate the dangers of subjecting these men to the irremediable sentence of death.

Irrespective of the legal issues, we earnestly urge Your Excellency to exercise clemency in these cases. There is a saying in the country of my birth, the Republic of Ireland, that "Grass never grows beneath the gallows".

As Commission Member for India I delivered this message with my perso-

nal endorsement to President Venkataraman. He asked his Council of Ministers to advise him.

Under our Constitution the President is a constitutional functionary. Even when exercising his prerogative power of pardon or reprieve he can only act under the advice of his Council of Ministers: not on his own. And in accordance with the advice given, the President of India rejected our mercy-plea, along with the mercy petitions of others.

But having once written, Niall would not remain quiet. He wrote again – the next day – (on 5 January 1989) :

“Your Excellency,

The International Commission of Jurists is profoundly disturbed by the rejection of pleas for mercy for Kehar Singh which has caused deep concern amongst the Jurists throughout the world.

As appears from the judgment, the only substantial evidence on which his conviction was based was that he had talks with Beant Singh on various occasions but there was no evidence as to the contents to those talks.

We beseech you to exercise your right and power to have regard to the merits of the case in order to prevent what might be a terrible error of justice.”

Again, the response was negative - Kehar Singh was hanged.

That such messages would annoy Prime Minister Rajiv Gandhi or make him think the poorer of the ICJ did not deter MacDermot. He said what was required to be said - on this occasion, as on every other. Firmly and with conviction.

Niall MacDermot and the ICJ were, for twenty long and eventful years, part of each other. Unlike most people who have been for so long in a position of power and prestige, Niall knew when it was time to go, because he believed that, in the end, institutions are more important than individuals. In 1990, at one of the Executive Committee meetings of the ICJ he announced that we must find a successor for his office in the following year. His decision was final. He would continue only until we found his successor.

He had brought the ICJ to great heights of glory, and was responsible for its manifold achievements. But he was conscious of human frailty - the ICJ had to go on without him since he could no longer effectively guide its programme of activities with the same intensity. And so it was that he and the ICJ were parted. It was (and remains) a matter of great personal regret to me that on his retirement we could not accede to his wish, to accommodate him as an Honorary Member of the Executive Committee. Our statutes did not permit this.

During his stewardship of the ICJ, the Commission had seen many vicissitudes which by dint of hard work and dedication he had overcome. He had also experienced the thrills and

triumphs of success, which he shared with us.

It could be said, about Niall as was said of one of the saints of old: He had fought a good fight, he had finished the course, and he had always kept the Faith. Whether at work or in retirement, Niall MacDermot's abiding faith was in the Rule of Law. It is of some comfort to us that it was and still is the principal objective of the institution he so cherished.

Niall MacDermot was born in 1916. When he died on 22 February 1996, I was reminded of that moving stanza in Laurence Binyon's celebrated war-poem - "For the Fallen":

"They shall grow not old, as we that are left grow old:

Age shall not weary them nor the years condemn,

At the going down of the sun and in the morning

We will remember them."

Human memory is fickle and short - far too short. And we hope that this commemorative volume of the Review will help preserve for posterity some scraps of memory about a man so universally respected and admired. And whom we in the ICJ loved.

Yes, at the going down of the sun and in the morning, we *will* remember him.

A Tribute to Niall MacDermot

*The Rt Hon Lord Justice Otton**

When a young barrister in England passes all his qualifying examinations, he embarks upon the most exciting part of his career. He becomes a pupil to an experienced barrister for twelve months. The barrister has only one pupil at a time. Master and pupil: it is a unique relationship and an extremely close one. The pupil shares the master's room and, metaphorically at least, he worships at his feet; he reads his cases, he learns how to write opinions, how to draft abstruse legal documents. But most important of all the pupil sits behind him in Court and learns the skills and the art of advocacy. The pupil is privy to the master's innermost thoughts about a case; they share the joys of victory and the sorrows of defeat. I had the great privilege to be Niall MacDermot's pupil.

Niall MacDermot was born in Dublin into a patrician and ancient Irish family. His father, Henry, was a distinguished Irish lawyer, practising at the Irish Bar in Dublin. He was not educated in Ireland but at a famous public school in England, Rugby, where the game of rugby football was invented. He read modern languages at Cambridge and went on to Balliol College, Oxford, where he read law.

He was at the threshold, even then, of a glittering career. War was declared.

He was commissioned into the Intelligence Corps and rose rapidly to the rank of Lieutenant-Colonel at the age of 26. General Montgomery picked him out and made him his Intelligence Staff Officer at 21 Army Group HQ. As the war came to an end, he was given the task of tracking down top Nazi criminals. A record of his incisive interrogations is in the archives of Whitehall. It is a masterpiece of its kind and was achieved without a vestige of torture (which he abhorred) but by intellectual challenge alone.

He was a most gifted and accomplished advocate. He had a commanding presence, handsome looks, a supple voice and a patrician but courteous manner. He was outstanding in cross-examination, which in the Common Law jurisdiction is one of the most prized skills, not always appreciated in Civil Code countries. It is our means of eliciting the truth. He was a first class lawyer with a quick, objective and analytical mind. He was an excellent pupil-master. He taught by example the value of preparation, the skill of argument, and the art of how to carry a Court rather than confront it.

Throughout this period he took a deep interest in English politics. He was a member of the Labour Party, which was a different type of party

* The Rt Hon Lord Justice Otton is Judge at the Court of Appeal, England.

from the one which we now witness in England today. He would have approved of New Labour. In 1957 he stood in his first by-election in London; he won it against all the odds. His talents immediately attracted attention and he was soon prominent and effective in debate. He lost his seat a few years later with the swing of the nation but he was fortunate enough to obtain another constituency which was much safer. He enjoyed immensely his early days in the House of Commons. He savoured the cut and thrust of debate, he enjoyed the trust and camaraderie of colleagues of all political persuasions. He delighted in the polemics of politics.

When Labour won the 1964 election he was chosen by James Callaghan to be his Financial Secretary at the Treasury, one of the most prestigious junior ministerial jobs in our political system. His intellect and industry quickly established his reputation as one of the ascending stars of the Wilson Government.

He left the House of Commons and returned to the English Bar and was soon in demand for important cases. If he had stayed at the Bar he would undoubtedly have been appointed a High Court Judge, the pinnacle of an English barrister's achievements. The reason he was not was because during his last case, when I was sitting behind him as his junior counsel, the news came through that he had been appointed Secretary-General to the International Commission of Jurists. He was overjoyed. He had confided to me that it was the only office that he desired as the pinnacle of his career. I am not wor-

thy to assess his contribution to human rights but they are recorded by others more qualified to do so. Suffice it to say that I believe that if Niall MacDermot had not had a career in the Common Law of England, with its regard for the Rule of Law, and if he had not had a political career, from which he derived his particular skills of diplomacy and judgment, he would not have been as distinguished a Secretary-General as he undoubtedly was.

His achievements in Geneva did not go unnoticed in England. In 1991 Her Majesty the Queen conferred upon him the rare honour of Commander of the British Empire.

What were those qualities that inspire me to speak so affectionately of him? He had a warm personality with a sophisticated sense of humour. He was marvellous company, an excellent raconteur and conversationalist. When he and I were together, laughter was seldom far away. He had a cultivated and rich mind. A visit to an art gallery with him was an education in itself. He had a knowledge and an insight into the artist's skills that were quite uncanny, and he was able to impart and instil that enthusiasm into me which survives to this day.

He was a considerable gourmet, but being an Irishman, he had his own taste; as an Englishman, I had to learn what it was. A dozen oysters and a pint of Irish Guinness stout was for him the elixir of life and I was expected to share. But the night that we heard he was to come to Geneva, it was champagne and oysters.

Throughout our friendship he encouraged me, and took great pride in my achievements. In his last days, it was very sad that he was so afflicted but I believe, and I think his companion Ludmila believes with me, that one of the last appreciations that he had was the fact that I had been appointed to the Court of Appeal. I like to think that it gave him a great sense of pride.

When an Irishman wishes to pay the highest compliment to another Irishman, he calls him a "lovely" man. When an Englishman wishes to pay a gentleman the highest compliment, he uses a word from Shakespeare: a "compleat" man. Niall MacDermot was unique; he was a lovely and compleat man. As Shakespeare said: "You and I will ne'er see his like again."

...Niall was an exceptional colleague whose advice and intellectual honesty was a constant inspiration. So much of my work was linked with the ICJ and his personal interest in the cause of refugees will never be forgotten....

Prince Sadruddin Aga Khan
(Former UN High Commissioner for Refugees,
present President of the Fondation de Bellerive)

...This is a great loss to the human rights community in general and the ICJ family in particular. Our only consolation is that he laid a solid foundation for human rights work to which he rendered invaluable service over several generations....

Kofi Kumado
(Member of the Executive Committee of the ICJ)

...Subsequently he kept in touch with me during these difficult years and did a great deal for the protection of human rights in Sri Lanka. Again in the 1980s when our judiciary was under attack he took up our cause in Geneva. All of us in Sri Lanka who are committed to Human Rights Movements mourn his loss...

Desmond Fernando (Vice-President of the ICJ,
former President
of the International Bar Association)

Leadership in the International Human Rights Movement:

Niall MacDermot

*Bertrand G. Ramcharan**

In each epoch, the international human rights movement needs its leaders to provide vision, orientation and strategies of action. Niall MacDermot takes his place in the hall of fame of leaders of the international human rights movement in the second half of the twentieth century.

I came to know Niall shortly after I joined the human rights programme of the United Nations in 1974. It was a time in which the human rights movement was looking towards the entry into force of the Covenants, was grappling with how to defend the international human rights norms in the face of serious violations of human rights, was searching for ways and means to move forward with the implementation of economic, social and cultural rights, and needed to bring international human rights norms to bear positively upon the daily lives of human beings in different parts of the globe. Niall MacDermot would play a part in each of these quests of the international human rights movement.

Niall brought to bear upon his work as Secretary-General of the International Commission of Jurists

diverse experiences as a Barrister, a member of Parliament, a Minister and a Judge. He combined simplicity of approach with depth of understanding and strength of conviction. When he took a position on an issue, he always commanded authority. As a leading member of the NGO Committee on Human Rights in Geneva, his first contribution was to shape the orientation of the Committee and to bring it into partnership with the United Nations. The concept of partnership would characterise his association with the United Nations human rights programme throughout.

While defending the Rule of Law, the independence of judges and lawyers as Secretary-General of the International Commission of Jurists, Niall moved early on to put the weight of the International Commission of Jurists behind a drive to give equal attention to the implementation of civil and political rights and economic, social and cultural rights. He organised brainstorming sessions on methods for the implementation of economic, social and cultural rights. He organised conferences on development and the Rule of Law, and he held a series of

* Dr. Bertrand Ramcharan is UN Coordinator, Regional Political and Security Cooperation; Adjunct Professor at the Colombia University School of International Affairs in New York and Member of the International Commission of Jurists from Guyana.

conferences in different parts of the world on human rights for the poor in rural areas. These were pioneering contributions.

Niall took special interest in the development of regional machinery for the promotion and protection of human rights, and his leadership and support were crucial in the events leading up to the organisation in Monrovia, Liberia, in 1979, of the seminar that effectively drafted the institutional parts of the African Charter on Human and Peoples' Rights. He was instrumental in getting the African Bar Association behind the project and brought four experts designated by the Bar Association to the seminar. Niall also did a lot of diplomatic groundwork and, after the African Charter was adopted, he lobbied hard to get ratifications to bring it into force. Niall also organised meetings in other regions of the world such as the Commonwealth and the Caribbean to help stimulate regional action and arrangements for the promotion and protection of human rights.

Niall moved forcefully to counter gross violations of human rights. At his request, I wrote two anonymous articles in the *ICJ Review* on torture as an international crime and on individual petitions in the practice of the United Nations. Niall pushed hard to outlaw torture, and after the Convention Against Torture was adopted in the United Nations, he pushed for supplementary instruments that would

introduce a system of regular visits to countries to make sure that torture was not taking place.

The abuse of limitation clauses was of great concern to Niall. He proceeded to organise a conference in Siracusa, Italy, to which he invited leading experts from different parts of the world to produce an authoritative statement on the scope and content of limitation clauses.

In the midst of all these and much more, Niall led the ICJ, edited its *Review*, pioneered the development of the Centre for the Independence of Judges and Lawyers, travelled to distant parts of the world for meetings with Presidents and Prime Ministers, spoke out forthrightly in various UN fora against violations of human rights, and provided advice and counsel to members of the human rights movement including the author.

Without a doubt, Niall played a leading role in giving definition to, and developing strategies for, the international human rights movement. I was enormously pleased in the later years of his life to join him as a Member of the ICJ where his simplicity of approach, depth of understanding and strength of conviction continued to inspire all of us on the Commission. The international human rights community stands in great debt to Niall MacDermot. The author remembers Niall with gratitude and with affection.

A Tribute to Niall MacDermot

*Sir Shridath Ramphal**

The first thing to say about Niall MacDermot is what a worthy successor to Sean MacBride he turned out to be. That is not a back-handed compliment. Niall would have understood and cherished it as a commentary on his stewardship. It is one that comes readily to me because my own relationship with the International Commission of Jurists (ICJ) goes back to that early time when there was a very real question of what would happen to the Organisation when Sean went. It was a question Niall was to answer in the most positive manner. The ICJ under his Secretary-Generalship went on from strength to strength.

I was a Member of the Commission when Niall was appointed and part of the consultative process that led to his appointment in 1970. I was then in Guyana, as Foreign Minister and Minister of Justice; but the links with the Organisation were strong. A few years earlier, in 1965 I had been instrumental in having the ICJ invited to mount a Commission to enquire into and advise on issues of race in the public sector in British Guiana. One result was the establishment of the first constitutionally enshrined Ombudsman system in the Western Hemisphere.

When I came to London in 1975 as

Commonwealth Secretary-General, therefore, I was coming physically nearer to an ICJ to which I already felt close - and of which, by this time, Niall MacDermot was Secretary-General. We were both to remain in office for the next fifteen years until 1990.

We saw each other intermittently all through those years, and the lines between Geneva and London were always open. The ICJ relies on its network of friends committed to the Rule of Law. The small staff in Geneva is the hub of a wheel whose spokes radiate worldwide. At the very centre is the Secretary-General, and the system is only as strong as his personal standing. Niall MacDermot's personal standing was very high indeed; we all regarded ourselves as in his service. He knew that, and we were frequently in touch - our two Organisations acting in mutual support.

I recall particularly my many conversations with Niall over Southern African issues. He, of course, shared fully the concerns of the Commonwealth over *apartheid* and its related evils: grave human rights problems not only in South Africa itself but also in those years of struggle in Rhodesia and Namibia. Our Legal Division maintained a close working

* Sir Shridath Ramphal is a former Secretary-General of the Commonwealth and presently an Honorary Member of the International Commission of Jurists.

relationship with the ICJ Secretariat in Geneva; each accepting the role of a resource for the other.

Nowhere was this cooperation more needed than in relation to the Commonwealth Eminent Persons Mission to South Africa in 1986 at a time when only the Commonwealth could have taken that important step, but only with the moral support of others who were labouring in the vineyard too. The ICJ was one of those, and Niall's support at that time

was something I greatly valued. The Mission was to play a catalytic role in the eventual dissolution of the *apartheid* system. Niall would have had the satisfaction of knowing that the ICJ had played its part in that historic victory for freedom and justice.

I recall Niall MacDermot, therefore, with both respect and affection. He served the ICJ with much distinction, and helped the ICJ to fulfil its great mission of upholding the Rule of Law worldwide.

A Tribute to Niall MacDermot

*Philip Telford Georges**

My closest contact with Niall MacDermot was at the 25th Anniversary Meeting of the International Commission of Jurists (ICJ) held in Vienna in 1977. It was, as I saw it, a crucial meeting. Niall had taken a bold initiative in organising in Dar-es-Salaam, Tanzania, in September 1976, a seminar on "Human Rights in a One-Party State". The conclusions of that seminar came up for consideration at that meeting. From the traditional perspective, the concepts of Human Rights and of a One-Party State were fundamentally inconsistent. As a result, the discussion was vigorous.

Securing the clear approval of the initiative was crucial. If that was done, then the Commission would be in a position to win the confidence of the one-party-States particularly in Africa, and play a useful role in strengthening and expanding the protection

of human rights in the administration of these States.

Far-sighted and principled as regards objectives but flexible and pragmatic as regards strategy, Niall used his influence to ensure the broad acceptance of the policy. This marked the beginning of the change in the image of the ICJ as a body ideologically committed in the then existing struggle between East and West for influence in the political systems of the Third World.

One of the formal events of the programme was a function at which the President of Austria met with the Members of the ICJ in one of the magnificent reception rooms of a palace in Vienna. I have a vivid picture of Niall, erect and courtly, walking part of the length of the stately room to shake hands with the President. He certainly could fit the occasion.

* Philip Telford Georges is an Honorary Member of the International Commission of Jurists from Bahamas.

...On this moment of desolation, the Government of Angola joins the International Commission of Jurists, Mrs. MacDermot and family in mourning a man whose ideals will certainly not be forgotten....

**Professor Dr. Adriano Parreira,
Ambassador and Permanent Representative
of Angola**

...MacDermot was for many years my close friend and to the Austrian Section and the other Sections of the International Commission of Jurists, a mentor in the promotion of human rights and the Rule of Law...

**Prof. Dr. Rudolf Machacek
(President of the Austrian Jurists Commission,
ICJ Honorary Member)**

...Mr. MacDermot was a great man who gave his life to the cause of human rights. His indomitable spirit strengthened and enlightened us all, and left a lasting imprint on our lives....

**Mr. Socorro I. Diokno
(Free Legal Assistance Group, Philippines)**

A Tribute to Niall MacDermot

Hans Thoolen*

As far back as 1973, a few young lawyers in the Netherlands created a Lawyers Committee for Human Rights. We had never heard about the International Commission of Jurists (ICJ) but we were looking for some international affiliation. There were some choices. We were able to send one of us, who happened to be on a skiing-holiday, to check out the ICJ. One of the reasons why we felt attracted more to the ICJ was certainly because the nice and polite man who opened the door turned out to be also the intimidating Secretary-General.

Little did I know then that I would soon be working during five years (1977-1982), as Executive Secretary, with this very inspiring man, sharing the same office, sharing even the same single telephone which was mounted on a dangerous swinging device. In the end I was able to judge Niall's mood of the day by the speed by which the contraption came in my direction! Now I would like to mention what I observed in him during all those years.

The first thing was sheer *intelligence*: the power of the mind - and not only as his *curriculum vitae* says "military intelligence". Tremendous *will power* and *tenacity*: he would insist and insist and

come back to things. His *work capacity*: I remember sitting on a plane with him, and he felt that even on a plane you had to work, so you could not just sit down and relax. It was a working day, so these were working hours, and to my great regret, when the stewardess passed by with drinks, he said: "No, no, we are working." His *drafting skills*: many of you must have known how he was sitting in his office, in the somewhat draughty villa of the Route de Chêne, a blanket wrapped around his knees, drafting so many international texts, and not just the Protocol to the Torture Convention. There were so many texts drafted by Niall MacDermot, more perhaps than we want to admit in public. His skills as a *public speaker*: people would indeed cling to his lips. *Loyalty*: mutual loyalty with his staff. However strong his guidance and sometimes his criticism could be (I must say I have seen more red ink coming from Niall, correcting my drafts, than from anybody else in my life), he was extremely loyal to his staff. He would always defend you. And if you were honest with him, he would stand up for you. I also must mention as a quality his unmitigated devotion to Ludmila: when I travelled with Niall, when we spent late hours in the office and even the week-ends, he was always talking about [his companion].

* Hans Thoolen is UNHCR Regional Representative for the Baltic States and Nordic Countries and former ICJ Executive Secretary.

Was Niall perfect? Even with the benefit of hindsight, I think he came very close. Sure, there were things that we disagreed about, but then there were so many things he knew better. In my view, he saved the ICJ in the early 1970s from a certain death – together with a few other people working to revive it, while many people said it would not survive. So, when the “human rights wave” came at the end of the 1970s, creating a positive mood in the human rights movement, Niall perhaps did not trust the wave or think it would not last. This perhaps made him reluctant to double the size of the office with the risk of collapse and then having to start again from scratch. On the one hand, he was not too keen on introducing information technology, but on the other hand also allowed me to do whatever I could in establishing the Huridocs Network. And it is this combination of openness and prudence that has taught me a lot.

We all nicknamed him – sometimes behind his back – as ‘Big Mac’.

Although it was meant very lovingly, in his face we always said ‘Mr. MacDermot’. I think I would give him another title now, I would say he is the “master teacher”. There are so many of us, more than I can mention, who have gone through a few years, or sometimes only a few months, with Niall MacDermot and learnt the skills and techniques of human rights work. Let me illustrate this: I am at the moment of writing these lines participating in a meeting in Geneva of the United Nations High Commissioner for Refugees (UNHCR), bringing together all its representatives. I found out that at least two other UNHCR representatives have worked in the ICJ.

Niall MacDermot has made a decisive impact on the state of human rights in the world, by his own interventions and actions and as the “master teacher” in the human rights area. I want to thank Ludmila to have shared him with us in the ICJ for 20 years.

A Tribute to Niall MacDermot

*François de Vargas**

I should like to pay tribute to the contribution of Niall MacDermot in the elaboration of international standards in the field of human rights and most particularly to his work in relation with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment - which was adopted by the Council of Europe in 1987 - and also with the Optional Protocol to the Convention against Torture - which remains to be adopted by the United Nations.

One could not have thought of a person more competent than Niall MacDermot in the task of lobbying. (Lobbying is an important facet of the work of non-governmental organisations and has greatly contributed to the elaboration of international human rights law). First and foremost because he was a first class jurist whose proposals nobody could dismiss as nonsensical or unrealistic. And then because his moral authority could not be challenged. He was a former minister in the Government of Her Majesty but he did not take his place amongst the governmental delegations but with NGOs at the back of the room. We knew that he never sided with anybody's interests albeit that of victims of human rights abuses. That fundamental principle guided him throughout his life: a life

devoted to the Rule of Law. And finally because he had managed to spin an immense network of relations. I am not only thinking about his relations with ministers and ambassadors, but also with representatives of the most modest human rights organisations in the most diverse countries: from Palestine to South Africa, from Latin America to Japan and from Russia to the United States of America. When the Secretary-General of the International Commission of Jurists (ICJ) made a proposal, within the framework of a United Nations' Working Group or in a simple discussion in the cafeteria of the *Palais des Nations*, nobody could refuse to overlook it.

His meeting in 1977 with a banker from Geneva, Jean-Jacques Gautier was decisive for the realisation of the latter's proposal. Jean-Jacques Gautier had just launched his idea that a system of visiting detention centres would be the only way to combat torture with efficiency and also to circumvent the hypocrisy of those States that solemnly condemn torture when they are largely responsible for its use. When he proposed to the Swiss government to take the initiative of a Convention that would institute such visits, he had initially suffered a sharp rebuff: a system of that type was considered as totally utopic.

* François de Vargas is the former Secretary-General of the Geneva-based Association for the Prevention of Torture.

The countries that practise torture would never admit that their centres of detention could ever be visited! Niall MacDermot found that the idea was a great one. He knew of the importance of prevention and he foresaw that States would, some more quickly than others and some after only a long process, one day accept the idea of that principle. He gave Mr. Gautier and the Committee that he had just founded - and which was to become some time later the Association for the Prevention of Torture - all his extensive knowledge of the international mechanisms and his art of diplomacy. Because at that moment - in 1978 - work had just started on the elaboration of the Convention Against Torture on the basis of a Swedish draft, he proposed that the visiting system conceived by Jean-Jacques Gautier become the object of an Optional Protocol to the Convention and found a government, that of Costa Rica, to present it before the UN Commission on Human Rights. Then, as the Convention Against Torture was itself encountering difficulties, he wrote the first draft of what was to become the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) which is today, in defiance of all the pessimism that prevailed at the outset, ratified by all the States of the Council of Europe, with the exception of those that have only very recently joined the organisation.

As soon as the ECPT had been adopted in 1987, Niall MacDermot, together with the Committee created by Jean-Jacques Gautier - who had passed away on 1 May 1986 - set forth to seek how the principle of visits to detention centres could be extended

to other regions than Europe. It is initially in Latin America that Niall MacDermot, Alejandro Artucio and myself concentrated our efforts and organised two seminars - one in Montevideo and the other in Barbados. However, Niall sensed the danger that this initiative might be highjacked from its initial objective and be devoid of the necessary efficacy and impartiality, and finally embarked upon the preparation of an Optional Protocol under the Convention Against Torture: an idea that had been his in the first place.

Niall MacDermot had the reputation of not always being very easy. True, he hated losing his time. It was not advisable to go and disturb him at a time when he was working on something important - and because everything he did was in fact important, it was not an easy thing to approach him. In reality, however, he was a very warm and human man and possessed a marvellous sense of humor. I remember being subjugated by his narration of war time anecdotes whilst in the intelligence service of His Majesty or of his meetings with ministers. But he also knew how to listen to the opinions of others. One day he flatly refused as an aberration a proposal made by one of his young collaborators only to tell him a few days later that he had thought about it and had been convinced, giving him also a host of other good arguments in favour of the proposal.

But what I remember above all of Niall MacDermot is the great sensitivity he masked behind his apparent phlegm. He loved art and music and his wife certainly contributed to his making important discoveries. The question

remains: would he himself have found the time to extricate himself from his work to go to a concert or to an exhibition? Above all other things he was attentive to human suffering. For him torture was not only a legal problem but above all an unacceptable and shameful act, because nothing can ever justify voluntarily inflicting pain on other human beings. Let me cite here a few lines he wrote in 1982:

"It was my lot to be a security officer during the Second World War. It was stressed in our training that torture was an unreliable method of obtaining information, as the victim would tell his interrogator what he thought the interrogator wanted him to say, rather than what he knew. And if he was one of those rare persons who could withstand the agonies of torture and say nothing, the interrogator would be utterly defeated. Hence, we were trained to create conditions which would 'break' the suspect, that is make him utterly alone and helpless, one whose only hope lay in making a full confession of what he knew. Some of the methods employed have since come to be known as 'psychological torture' and have been internationally condemned. And

rightly so, for many victims of both types of torture affirm that they found the psychological torture far harder to endure than the physical torture."

Stemming from his own experience as an officer in the intelligence services, he witnessed that even in his own country suffering could be used as a method to extract words from people. That same attention to sufferings of the most hidden sort led to him to his engagement on behalf of persons suffering from mental disorders, notably in Japan, and to give his unfaltering attention to all that is referred to in the human rights jargon as inhuman and degrading treatments.

He devoted his immense intelligence and his relentless capacity to work to the service of the victims who suffered the most. When one talks about Niall MacDermot the one thing that assumes paramount importance is his indefatigable capacity to work. I don't think I can recall that he ever went on a holiday without taking with him dozens of files and without phoning his secretariat every two days. This is because, for him, nothing could take precedence over the necessity to do everything possible to push back the limits of human cruelty and herald the advent of the Rule of Law.

... Calling attention to the repressive tactics of Chilean and Argentine dictators during the 1970s and Israeli mistreatment of Palestinian inmates in the 1980s, MacDermot fearlessly and consistently lent his eloquent voice to the voiceless.

Time Magazine
(Notebook - Milestones, 11 March 1966)

...In the Caribbean, we hold Mr. MacDermot in high esteem and recognize his long and outstanding service in the protection of human rights and advancement of the Rule of Law....

Lloyd G. Barnett
(immediate past President of the Jamaican Bar Association)

...In spite of the existence of apparent or real differences in the past, we were united more deeply by a mode of action and shared beliefs. I recognised and appreciated his intelligence, his generosity and the true greatness of his views....

Joë Nordmann
(Advocate, President emeritus of the International Association of Democratic Lawyers)

A Tribute to Niall MacDermot

*José Zalaquett**

Niall MacDermot came to the offices of the Committee for Peace in Santiago de Chile, in March or April of 1974. The Committee, later known as Vicariate of Solidarity, was the only organization assisting the victims of the regime headed by General Pinochet, which came to power after the coup d'Etat of September 1973.

We had received a call from our friends of the World Council of Churches in Geneva, who sponsored Niall's trip, alerting us that someone important was about to arrive, but we had no idea of whom he might be. So, when Niall introduced himself I was both pleasantly surprised and rather overwhelmed. The ICJ was well known in Chilean legal circles and Niall's bearing seemed the very embodiment of the organization's prestige. I was then the head of the Committee's legal department, which provided legal assistance to political prisoners and to relatives of people killed or 'disappeared'. In this capacity I became the Committee for Peace's contact person for Niall.

Niall had come in advance to the rest of the ICJ delegation to do the preparatory work and certainly there was no time to waste. So, we went to my home that same afternoon, for a quiet,

long planning session. I could appreciate then his extraordinary talents - his brilliant analytical mind, his quick grasp of new situations, his precise, rigorous methods of dealing with a brief. It is no secret that Niall was hard-working to a fault. The coffee breaks were therefore rather brief, but they allowed me a glimpse into some of Niall's other qualities - his delightful sense of humor, his love of nature (he could name every plant and flower in my small back garden) and his passion for art. Niall had noted the art work on my walls. For a young lawyer of not immoderate income, these consisted mainly of museum reproductions of contemporary paintings, chiefly by Paul Klee, who was and still is my idol. Niall told me that he was a Trustee of the Tate Gallery and that he owned a number of art works, which he went on to describe with the hushed tone of rapture that he reserved for his most heartfelt statements about art or nature. I was in awe.

Within a couple of days Kurt Madlener, a German jurist, and Covey Oliver, a retired American diplomat, had joined Niall and the ICJ mission proceeded in earnest. I accompanied them to several of their engagements and joined them sometimes in the evenings, to discuss the progress made.

* José Zalaquett is an advocate, Professor of Law and Member of the International Commission of Jurists from Chile.

At such occasions I could bear witness to Niall's healthy capacity for moral outrage which went hand in hand with his well honed political savvy.

I vividly remember one telling episode. I had passed documentation to Niall proving that the military regime's Martial Courts had convicted many Chileans to death after grossly unfair trials. In some of these trials the death penalty had moreover been applied despite the fact that the military legal advisor, who was a member of the Martial Court, had voted against it (the Chilean law demanded a unanimous decision for the death penalty to be applied). Niall was indignant. At a meeting with military people he raised the issue. The lame excuse they gave him was that the legal advisor was not strictly a member of the Martial Court. At a subsequent meeting, this time with members of the Supreme Court, he cunningly asked first about the status of the Martial Courts' legal advisors. The Supreme Court justices, believing he was trying to find out if the Martial Courts included a legally competent person, emphatically assured him that the legal advisor was a full member. Niall then confronted them, to their embarrassment, with the evidence proving that the death penalty had been applied despite the advisor's contrary vote.

Niall had asked me to organize a meeting with legal scholars of high standing. I did. The gathering included prominently my mentor, Professor Alfredo Etcheberry, in whose cathedra I served as assistant professor. Months later, Niall nominated Professor Etcheberry to fill the vacancy left in the

ICJ by Justice Illanes, from the Chilean Supreme Court, who had publicly resigned as a Member of the Commission after receiving a copy of the ICJ mission's report. Such were the times...

A couple of months after Niall's visit to Chile I travelled to Geneva, to meet with officers from the World Council of Churches, our main supporting organization. It was the beginning of the summer and this was my first trip ever to Europe. For the week-end after my arrival I had planned to go to Bern, to see the Paul Klee collection in the Kunstmuseum. Niall learned about this and called me up to tell me that he had some business in Bern on Saturday and would I not like to drive with them early enough so we had time to visit the Museum together? We drove to Bern with Niall and his wife, Ludmila. I fondly remember this journey, listening to Niall musing about art and reminiscing about his role in the Second World War. We spent long hours at the museum. By closing time, Niall and Ludmila bid me farewell, to return to Geneva. Only then I realized that they had no other business in Bern but to take me there and show me the collection. Before departing, Niall even took care of asking the Secretary of the Museum to help me finding lodging in Bern.

Two years later, the military regime expelled me from Chile and I spent the following ten years abroad. I was very involved with Amnesty International and other human rights organizations. In this new capacity as an international human rights worker I had many opportunities to meet with Niall over

the years. I could thus follow closely his many seminal contributions to the advancement of human rights: his pioneer series of regional human rights conferences with the objective to explore the social, economic and cultural dimensions of fundamental rights and to develop regional networks of activists (in the region I came from, he encouraged the creation of the Andean Commission of Jurists); his creative initiatives in the area of emergency rule; his signal contributions to the development of the UN mechanisms for the protection of human rights... The enumeration of his achievements could go on and on. He was a towering figure in the international scene, acknowledged by his peers as the dean of the international human rights community.

As it is well known to all who knew him, he went about his work earnestly, tirelessly and without the slightest fanfare. I feel doubly privileged to have

joined him in some initiatives and to have received the constant gift of his friendship and kindness.

The last time I saw Niall was in Geneva, in January of 1992, on the occasion of the Triennial meeting of the ICJ. At the end of the gathering he asked me to join him and his wife Ludmila for tea, at their home. He had seemed frail during the meeting but as we went about the rooms, greeting every piece in their lovely art collection, he became increasingly animated.

A year later I received a personal letter from him. He sensed his physical decline and did not hide it. But even in his personal communications he always found place for points of substance about human rights. The last lines ended inconclusively, as if he wished to go on, but accepted he could not...

I will never forget him.

...Niall MacDermot was endowed with both physical and spiritual elegance, he was a shrewd diplomat, and he knew how to preserve the honour and the universal prestige of the Commission at a difficult time of its existence. ...

**Vladimir M. Kabes (International consultant,
former ICJ Executive Secretary)**

...Dr. MacDermot's leadership of the ICJ during the difficult years in Argentina after the military coup d'Etat of 1976 made us realise the importance of his dedication to, and solidarity with, the cause of human rights and the defence of justice, of human dignity and so that judges and lawyers become instruments in the service of all humankind....

**Centro de Investigaciones Sociales y Asesorías
Legales Populares (Argentina)**

...The few years I worked for him at the beginning of my career almost 20 years ago, left a deep and lasting impression. Much of what I am today, as a human rights advocate, I owe to him. He taught me to look at truth in the face, and to state it clearly and calmly, without excess. he was an example of hard work and dedication....

Dan O'Donnell (former CIJL Director)

Niall MacDermot: A Life Dedicated to Human Rights

from Andean Commission of Jurists' Newsletter N° 121, February 1997*

Niall MacDermot was a prominent jurist, thinker and politician, who dedicated his life to an active and fruitful promotion of human rights. Judge Michael Kirby, who is President of the International Commission of Jurists, once eulogised MacDermot's enthusiastic diligence, considering him a "State of Law and human rights champion".

The Andean Commission of Jurists pays him special homage, as it was at MacDermot's initiative and due to his invaluable and decisive support that our institution was founded. We remember his personal generosity, human quality and professional rigour with affection and recognition.

We met MacDermot as a brilliant and dynamic Secretary-General of the International Commission of Jurists. At that time, however, he had an outstanding public trajectory in his country (United Kingdom), first in the struggle against nazi-fascist totalitarianism during the Second World War, and later as a Deputy in the Chamber of Commons, Secretary of the Treasury and State Minister for Planning and Land.

Those of us who had the privilege of knowing him closely can bear witness

to his pugnacity in terms of providing international human rights laws with substantial content and his personal ability as leader of the International Commission of Jurists.

His inspiration to impel the creation of the Andean Commission of Jurists was a reflection of his project in which the construction of a State of Law and human rights defence was completely removed from all paternalism. To the contrary, local and regional entities would play an increasingly active role against a backdrop of respect for existing diversities in the world.

In MacDermot's project, the aim was to link these institutions and the International Commission of Jurists, through appropriate coordination measures, so that there would be forces and dynamics to promote the State of Law, democratic institutionality and respect for the dignity of the human person in each region. MacDermot lucidly and realistically saw that an institution like the International Commission of Jurists could have a true world dimension if it impelled and worked with regional organisations that could be closer to the reality and therefore promote more effective actions in favour of human rights.

* ICJ affiliated organisation, headquartered in Peru.

In his memory, the Andean Commission of Jurists pays homage to him, considering him an inspiration. We join the appreciation of an institution such as the International Federation Terre des Hommes, which

sustained that MacDermot "will remain in our memory as an example to follow in our struggle for respect for peoples' rights, both civil and political, economic, social and cultural".

Part Two

*Speeches Given
by*

Niall MacDermot

Violations of Human Rights as Threats to Peace

Niall MacDermot

Contribution to the Oslo Colloquium on
"Human Rights and Peace", December 1978

The link between peace and human rights is obvious. Nevertheless it needs to be analysed with some care. Violations of human rights may themselves be threats to peace, but equally, action taken in the name of protecting human rights may itself gravely endanger peace. It is important, therefore, to identify those situations in which international action in defence of human rights is both legitimate and likely to contribute to the preservation of peace.

Perhaps we may take as a starting point that war is itself the greatest of all violations of human rights. It is a massive violation of the basic right of all, the right to life. And the victims of war increasingly are civilians. It has been estimated that in the First World War, 5% of the victims were civilian, in the Second World War 50%; in the Korean War 60%, and in the Vietnam War 70%.

The pursuit of peace must therefore be a foremost concern of anyone working to promote human rights. This concern should, it is suggested, be directed to seeking to strengthen the machinery for the peaceful settlement of disputes and to seeking to remove the causes of those tensions between peoples and nations which threaten the peace.

It is with the second of these that I wish to deal, and I would suggest that it might be helpful if we were to try to identify the principal violations of human rights which may threaten or endanger peace. These fall, I believe, into two main classes.

1 Those with an international element in the violation itself. Among these are:

- acts of aggression or incitement to aggression;
- denial of the right of self-determination of peoples;
- alien subjugation, domination and exploitation; and
- *apartheid* and other systems based upon racial discrimination and domination.

2 Violations which though not international in character, are nevertheless of such a grave character that they are legitimate matters of international concern and not excluded by Article 2 (7) of the Charter as matters "essentially within the domestic jurisdiction" of the State concerned.

The first case is aggression. On the face of it this is the simplest and clearest

case. In practice it is usually far from simple, far from clear. After years of work, the Special Committee of the General assembly had produced a somewhat complicated definition of aggression. This, at least, is a beginning. But to decide who is the aggressor in any particular situation is usually not easy, and the UN is not possessed of effective means of fact-finding. Aggressors usually complain that they are themselves the victims of aggression, as we have recently been reminded by the current dispute between Tanzania and Uganda. As often as not, no decision is reached on the issue within the UN, usually because there is no political consensus on the matter, or because the aggression is rapidly successful and no-one thinks it realistic to try to restore the *status quo*. Whatever the reason, the ineffectiveness of the international community to deal with acts of aggression serves only as an encouragement to potential aggressors.

The case of the denial of the right of self-determination of peoples is perhaps the most difficult and explosive issue in this field. Only in its application to the struggle for independence of peoples under colonial domination is the position clear under international law. There is an established code of principles elaborated in the 1960 UN Declaration on the Granting of Independence to colonial Countries and Peoples.

In other cases, however, there is little to guide us. There is no agreement as to what constitutes a "people" entitled to exercise the right, nor as to the circumstances in which it may be exercised, nor as to what constitutes a suffi-

cient exercise of the right. Any assertion of the right is almost certain to come into conflict with the principle of the territorial integrity of States. The cases of Katanga, Biafra, Bangladesh, Eritrea and Cyprus illustrate the dangers to peace which may arise.

The concept of self-determination is derived from the relatively modern theory that national sovereignty derives not from the sovereignty of the Prince or other ruler but from the 'sovereign people'. Thus, the notion of self-determination implies, legally speaking, the right of a people to constitute, either alone or jointly with other peoples, a sovereign nation. The fullest authoritative exposition of this doctrine is contained in the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations approved by the General Assembly in 1970. Among the seven principles proclaimed are the principles of equal rights and self-determination of peoples and the principle of sovereign equality of States.

By virtue of the first of these it is stated that "all peoples have the right freely to determine, without external interference, their political status and pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter". As to the form which self-determination may take it declares that "the establishment of a sovereign and independent State, the free association or integration with an independent State, or the emergence into any other political status freely determined by a

people constitute modes of implementing the right of self-determination by that people".

By virtue of the second of these principles, the sovereign equality of States, it is stated that "the territorial integrity and political independence of the State are inviolable", and full weight has to be given to this principle when considering the extent of the right of self-determination of peoples.

A courageous attempt to reconcile these two opposing principles is contained in one of the paragraphs on the principle of self-determination. This states:

"Nothing in the foregoing paragraphs shall be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

This appears to establish two propositions.

First that the principle of territorial integrity is to prevail in the case of sovereign States conducting themselves 'in compliance with the principle of equal rights and self-determination of peoples'. This seems to recognise that a

State may include more than one 'people', each of whom is entitled to self-determination but implies that self-determination can be achieved within the framework of a larger State, presumably by a reasonable measure of autonomy, perhaps within a federal State.

The second proposition is that the principle of territorial integrity is to prevail only where the State is conducted in accordance with the principles of equal rights and self-determination of peoples and accordingly has a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

This second proposition implies a limitation on the classical doctrine of international law that self-determination is a right which can be exercised only once. According to this doctrine, if a people has once decided in its right to self-determination to enter into a unitary or federal State with others, it cannot afterwards claim the right to secede under the principle of self-determination. The implied limitation is that if one of the constituent peoples of a State is denied equal rights and is discriminated against, its full right of self-determination, including a right to secede, may revive.

It is only necessary to state such propositions to see what explosive issues they contain. One case, and perhaps the only one, where a right to self-determination has been successfully asserted since the Second World War, other than against a colonial power, is that of Bangladesh. The creation of this State was, however, not due to a recognition of the justice of their cause

either by the United Nations or by the Government of Pakistan, but by the armed intervention of India, allegedly on grounds of self-defence.

Once again we have to note the ineffectiveness of the machinery of the United Nations for resolving conflicts of this nature.

The third class of international violations of human rights is that of alien subjugation, domination and exploitation, a class which is likely to overlap with the denial of the right of self-determination and may also be the result of an aggression. The one situation which has been denounced within the United Nations on these grounds is that of Israeli occupied territories on the West Bank, the Golan Heights and the Gaza Strip.

The fourth class is *apartheid* and other systems based on racial discrimination and domination. Although this class of violation of human rights occurs within the territory of one State, it is nevertheless considered international in character. In the first place, since it involves the domination by the people of one race over the people of another race, the struggle of the oppressed people for their liberation is, like the liberation struggle of peoples subject to colonial domination, now recognised as being international in character. This was established at the Diplomatic Conference leading to the new Additional Protocols to the Geneva Conventions. Secondly, a violation of this kind is considered to be a threat to international peace, as was explicitly recognised by the United Nations in the case of Southern Rhodesia, leading to

the imposition of sanctions. Thirdly, the practice of *apartheid* is now recognised by many States as a crime under international law.

I turn now to violations of human rights which though not international in character, are nevertheless legitimate matters of international concern.

Resolution 1503 of the United Nations Economic and Social Council lays down a procedure whereby the Commission on Human Rights, aided by its sub-Commission, may examine communications alleging a "consistent pattern of gross violations of human rights". No-one has attempted to define this term. The matter has been approached empirically. The procedure is a confidential one, but at the last meeting of the Commission on human Rights the Chairman named publicly nine countries on which action was being taken by the Commission under this procedure, indicating that the Commission considered there was at least *prima facie* evidence of a consistent pattern of gross violations in these nine countries. Apart from cases under the Resolution 1503 procedure, other situations have been the subject of public examination and action by the Commission on Human Rights, notably the situations in Southern Africa, in the Middle East and in Chile, and another case, that of Cambodia, is now under consideration.

It should be said that the Soviet Union and other socialist countries have been less than enthusiastic about the Resolution 1503 procedure, but the fact that situations revealing a consistent pattern of gross violations of

human rights are legitimate matters of international concern is not called into question. Indeed, the Deputy Foreign Minister of the USSR, Mr. Zorin, stated expressly in the Commission on Human Rights some years ago that such situations were legitimate matters of international concern, though he argued that a communication procedure was not necessary in order to identify them.

However reprehensible situations of gross violations may be, it is not every such situation that constitutes a breach of the peace or a threat to peace. Nevertheless, the formula of a consistent pattern of gross violations of human rights is an important one and relevant to the question of peace-keeping, as it identifies those violations which are legitimate matters of international concern. It would, therefore, be helpful if agreement could be reached upon the criteria for determining whether or not such a situation exists.

In this connection it is of interest that the United States of America has, in applying its domestic legislation, worked out some criteria of its own. When congress decided to impose limitations on the power of the Executive to grant economic and military aid to other countries, it borrowed almost *verbatim* the wording of resolution 1503 in restricting the power to grant aid to countries which engaged in a "consistent pattern of gross violations of internationally recognised human rights". At the same time it required the State Department to make reports to it on human rights in the aid recipient countries. These reports were required to deal specifically with particular classes

of violations, and consequently these have tended to become the accepted criteria under this legislation of situations of gross violations of human rights.

These criteria are violations on a substantial scale and over a period of time of:

- the right to life, as by massacres or 'disappearances';
- the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and
- the right not to be imprisoned without trial, or without a fair trial. These three classes of violations constitute a convenient rule of thumb for identifying the worst situations of gross violations. If these violations exist on a substantial scale, there can be little doubt that there is a consistent pattern of gross violations of human rights. Moreover, two of them, the first two, are violations of rights which are declared in the International Covenant on Civil and Political Rights to be non-derogable in any circumstances, even in times of public emergency which threaten the life of the nation.

There is, however, some danger in identifying these particular criteria too closely with the formula of a consistent pattern of gross violations. The danger is that it may be thought that in the absence of these particular violations there can no situation which constitutes a legitimate matter of international concern. An example, perhaps, is the

present situation in Chile where the 'big three' violations, as they are sometimes called, have largely (though not entirely) ceased to exist, but where there is still a self-imposed military regime, having no democratic legitimacy, which continues to operate an extremely repressive system of government violating virtually every other human right.

Finally, I should like to say a word about the doctrine of humanitarian intervention. In the 8th edition of Oppenheim's International Law, Sir Hersch Lauterpacht defined the doctrine as follows: '... when a State renders itself guilty of cruelties against and persecution of its nationals in such a way as to deny their fundamental human rights and to shock the conscience of mankind, intervention in the interest of humanity is legally permissible'. Accepted by both Grotius and Vattel, this doctrine has a venerable history and has been invoked many times since. An example was the armed intervention by Great Britain, France and Russia against Turkey, which led to the independence of Greece in 1830.

In the view of many international lawyers this doctrine is still valid in international law, giving the right to any State to intervene by armed force to the extent necessary to bring to an end the cruelties and persecutions in question. There is no doubt that humanitarian intervention can be the expression of a profound and innate sense of justice corresponding to the natural feelings and reactions of the average person. Nevertheless, it is a questionable doctrine from two points of view. First, it may be open to all sorts of abuses and risks and be used as a pretext for aggression. An analysis of the cases

where it has been invoked indicates that it is used only by the strong against the weak and always with an ulterior political motive to derive an advantage which has little if anything to do with the cruelties and persecution in question. Secondly, it is doubtful whether it is consistent with Article 2 (4) of the Charter of the United Nations which requires all Members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations".

If it be argued that the cruelty and persecution in question is of such a character as to threaten the peace, then by virtue of Article 39 it is for the Security Council to "determine the existence of any threat to the peace ...and make recommendations or decide what measures shall be taken ...to maintain or restore international peace and security".

In a study on the Events in East Pakistan, 1971, published in the following year, the Secretariat of the International Commission of Jurists suggested that humanitarian intervention, other than by decision of the Security Council of the United Nations, could be justified only if the following requirements were satisfied:

"1 The State against which measures are to be taken must have shown itself manifestly guilty in respect of its citizens of systematic cruelty and persecution to the point at which

a. their fundamental human rights are denied them, and

- b. the conscience of mankind is shocked and finds that cruelty and persecution intolerable.
- 2 The circumstances must be such that no practicable means of resolving the problem is available, such as negotiations with the State which is at fault, intermediation, or submission to a competent international organisation.
 - 3 The international community must have had the opportunity within the limits imposed by the circumstances:
 - a. to ascertain whether the conditions justifying humanitarian intervention do in fact exist, and
 - b. itself resolve the problem and change the situation by applying such measures as it may deem appropriate.
 - 4 If the international community does not avail itself of the opportunities offered and fails to act in order to prevent or put a stop to widespread violations of human rights which have been called to its attention, thereby leaving no choice but intervention, then a State or group of States will be justified in acting in the name of humanity provided that:
 - a. before resorting to force it will deliver a clear ultimatum or 'peremptory demand' to the State concerned insisting that positive action be taken to ameliorate the situation;
- b. it will resort to force only within the strict limits of what is absolutely necessary in order to prevent further violations of fundamental human rights;
 - c. it will submit reports on its actions to the competent international agency to enable the latter to know what is being done and to intervene if it sees fit to do so;
 - d. it will withdraw the troops involved in the intervention as soon as possible."

We added the comment "In our present world it is only in quite exceptional circumstances that unilateral action on the part of a State can be considered as legally justified on the basis of the doctrine of humanitarian intervention".

I can only say that, even with all these qualifications, I feel less confident than I did six years ago that unilateral humanitarian intervention can ever be justified.

The best hope for peace lies in utilising and in strengthening the procedures for concerted international action with the United Nations Organisation, rather than by permitting and encouraging Nation States to go to war, even to rectify gross violations of human rights which shock the conscience of mankind.

The Credibility Gap in Human Rights

Niall MacDermot

Speech to

Canadian Human Rights Foundation on 21 November 1974

The credibility gap in human rights is a term coined by my predecessor, Mr. Sean MacBride. He used it to refer to the gap between the standards which governments proclaim, or accept, or at least pay lip-service to, and the reality of their practice in enforcing or suppressing these rights.

The questions I would like to consider with you are the extent of this gap, the reasons for it, and what, if anything, ordinary citizens who care about human rights can do about it.

The standards, the internationally accepted standards, are those contained in the International Bill of Human Rights, i.e. the Universal Declaration and the two international covenants, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights together with its Optional Protocol. The two Covenants have not yet come into force, but with the recent surge in ratifications only 8 more ratifications are required for the Covenants to become formally part of international law. The Optional Protocol, giving the right of individual petition or complaint, already has the requisite number of ratifications, so it will come into force as soon as the Covenant does. A number of Western governments, including Canada, are believed to be coming shortly to the

point of decision, whether or not to ratify the Covenants. It is of the utmost importance that they should, especially as the USSR and other Eastern Bloc countries are making much of the fact that they have ratified while most Western powers have not.

International lawyers argue about the status of the Universal Declaration, whether it is merely a general statement of principles recommended to governments by a resolution of the General Assembly, or whether it now forms part of the customary law of nations, and so imposes binding obligations in international law. Your Vice-President, Professor John Humphrey, argues cogently for the latter view. Whatever be its legal status, the Universal Declaration remains a very remarkable and significant document. That a declaration of this kind, identifying so many specific human rights, should be adopted and accepted, even in principle, by almost all governments of the world, of widely differing cultures and social systems, is a tremendous achievement. It sets standards against which the conduct of nations can be examined; it provides a basis for discussion, and a standard for judgment. It plays an important role in education. The ideals it proclaims are taught in all parts of the world. Many of the new nations have enshrined its principles in their Constitutions. Even if they fall short in

their achievement, they nevertheless remain committed to these principles.

Whilst the declaration is accepted universally, or almost universally, it must be admitted that it is regarded with varying degrees of enthusiasm in different parts of the world. In some quarters it is described as a Western-oriented document. Certainly the articles relating to civil and political rights were framed largely by Western or Western trained lawyers, and are expressed in terms which are largely derived from Western legal systems and Western concepts of democracy. It would undoubtedly be a useful contribution to the understanding and acceptance of human rights if lawyers from other legal systems could draw up authoritative statements of human rights based upon their own legal tradition. For example, an Islamic Declaration of Human Rights could be a valuable document in helping to establish the truly universal character of these rights. But the fact remains that the development of the conception of human rights is one of the achievements of Western civilisation and some of the principles stated in the Declaration are essentially Western concepts.

One of these is the Rule of Law. The International Commission of Jurists exists according to its statute to promote the Rule of Law. For us, human rights and the Rule of Law are two sides of the same coin; we believe that neither can exist for long without the other. This is recognised in the Preamble of the Universal Declaration which says in words which sound a warning to authoritarian regimes:

"It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

What do lawyers mean when they speak of the Rule of Law? There is, of course, a vast literature on the subject. The International Commission of Jurists, in a series of international conferences held in Europe, Asia, Africa and Latin America between 1955 and 1967, brought together lawyers from all parts of the world to spell out as precisely as possible what is meant by the Rule of Law. In essence it means four things.

First and foremost, it means a system in which those who govern cannot do so arbitrarily but are themselves subject to the law.

Secondly, to make this subjection of the Executive to the law meaningful, there must be a genuinely independent Judiciary. And I think most of us would say that there needs to be an independent Legislature as well. When judges and legislators are dependent upon the Executive, they are liable to end up as little more than the tools of an authoritarian government.

Thirdly, the law must itself have a moral basis recognising the inherent dignity of every human being and his equal entitlement to the protection of his fundamental rights and freedoms without discrimination on grounds of race, religion, sex or other distinction.

Fourthly, the law must provide an effective and speedy system of judicial

remedies to enforce these rights; this implies among other things a fair trial system, and an independent legal profession so organised as to provide the public with the service it needs for its protection.

Now, if we are honest, when we look around the world, we find relatively few countries where the protection of human rights under the Rule of Law, in the terms just defined, can be said to exist. Indeed, if they are subjected to close enough scrutiny, perhaps no country will measure up. Those that come nearest are for the most part either Western European countries or countries which have derived their legal and political systems from Western Europe. However, before we start feeling too superior about this, let us remember that Western European settlers have been responsible for the two countries which are perhaps the greatest of all violators of human rights. I refer, of course, to the racist regimes of South Africa and Rhodesia.

In the 1950s and early 1960s when the tide of independence was at its height in the Third World countries of Asia and Africa, and when there was a strong current flowing towards more democratic regimes in Latin America, great optimism prevailed about the future of human rights and the Rule of Law in those countries. Most of their statesmen and almost all their lawyers had been trained in Western schools or traditions, and those at least who had not accepted the Marxist analysis of society, were determined to establish in their countries parliamentary democracies in the Western style, with all the basic freedoms of opinion, expression,

association, assembly, freedom of the press, trade union freedom and so forth, guaranteed under the Rule of Law in multi-party democracies.

Now, only a decade or two later, there are very few of these countries in which there is any real freedom of political association and expression, and very few where opponents of the government cannot be arrested and detained for long periods without trial on the grounds that they are endangering national security and public order. In all too many countries, the security authorities, feeling themselves beyond the reach of the law, indulge in brutal torture and ill-treatment of suspects, especially under interrogation. And, as recent annual reports of the International Press Institute have shown, there are precious few countries in all the world where there is any real freedom of the press, about one in five of the 132 Member States of the United Nations.

This is one aspect of the "gap". But let us look at the gap for a moment from another aspect. One of the Members of our Commission, a distinguished Professor of Law in one of the Third World countries, said to me recently, "You must always remember that human rights" - and he was referring to civil and political rights - "human rights mean very little to a man on less than 3,000 calories a day". If that is true, and in general I fear that it is, it means that human rights mean very little to two thirds of the world's population. These rights are significant only for us, the remaining third, who consume two-thirds of the world's food resources. When we speak of human

rights, what we usually have in mind are the civil and political rights in Articles 2 to 21 of the Universal Declaration. To the Third World, the Articles which they would rather see achieved, if they have to choose, and which rank highest in their priorities, are Articles 22 to 28, which set out the economic, social and cultural rights, the right to social security, the right to work with just and favourable remuneration, the right to rest and leisure, the right to a standard of living adequate for the health and well-being of a person and of his family with the right to security in unemployment, sickness, disability, widowhood and old age, the right to education and the right to participate freely in the cultural life of the community.

For them the "gap" is the economic gap between the rich nations and the poor. The communist countries claim that they have gone further than the capitalist countries in realising the economic, social and cultural rights. It is a questionable claim but it is not one that can simply be dismissed. For example, are we sure that the general level of culture of the average worker in the West is higher than that of his counterpart in the Soviet countries?

Against this backdrop, let us consider why it is that human rights in the Western sense, civil and political rights, are not more effectively protected in the Third World countries. I do not pose the question for the communist countries because, for all their adherence to the Covenant on Civil and Political Rights, they interpret it in their own way. Freedom of speech, freedom of association, freedom of assembly, free-

dom of movement and freedom of conscience and religion have limitations for them far beyond anything we would find acceptable. But most of the Third World countries do subscribe in theory to human rights under the Rule of Law as we mean them. They do not accept the communist view of society. They aspire to political freedom. Where civil and political rights are suspended, it is usually said that this is due to a situation of national emergency in which the security or integrity of the State is threatened, and exceptional measures are needed. Or it is said that they are undergoing such revolutionary social changes that they cannot afford the luxury of these freedoms at the present time. But the doctrine remains and this, in itself, is important. The subject of human rights is taught to students, and a very popular course it usually is. At the law schools the theory of the Rule of Law is still part of the curriculum. Why then is there such a wide gap between their aspirations and their achievements.

There are, of course, many different factors, but I would like to single out four which, as it seems to me, make the achievement of human rights exceedingly difficult in these countries, and we need to understand them before we pass judgment, and certainly before we try to influence them.

First, they have not had time to develop political and social systems adapted to their own traditions and needs. Looking back, the assumption that multi-party parliamentary democracy on the US, British or French models would prove to be a viable political form for the newly independent States of the Third World now seems

rather extraordinary. It has taken us long enough to develop them and find the forms suited to our traditions and needs, and in many cases it has been a painful process. In the Western world itself democracy has not infrequently failed, as we have seen in recent years in Greece, and in Northern Ireland, not to mention the fascist regimes in Germany, Italy, Portugal and, still continuing, in Spain.

Secondly, these countries are still at the stage of nation building. In Africa in particular their boundaries were artificial creations imposed on them from outside, cutting across tribal areas, and grouping together tribes often with a long history of rivalry and mutual suspicion. For a parliamentary democracy to work, there must be a basic sense of national unity, a broad consensus of agreement about the nature of the political and economic system, and a spirit of mutual tolerance within this framework. There also needs to be a sound and impartial administration, a capable civil service. These conditions are not easy to achieve, and in most Third World countries they are still lacking.

A third factor in some countries is a tendency towards violent extremism in political opposition. When the opposition feels that it has no means of attaining power by lawful means, it has resort to violence, either direct physical action by terrorism, or by inflammatory propaganda seeking to stir up mob violence and unrest. Terrorism has done untold harm to human rights. Generally, this is a matter of indifference to the terrorists. They regard the whole edifice of civil and political rights

as a hypocritical bourgeois facade designed to conceal a system of economic class exploitation, which they want to destroy. None of them has succeeded in getting rid of the economic system by these methods, but they have certainly succeeded in getting rid of what they regard as the bourgeois facade.

A fourth factor is the understandable, but in my view usually mistaken belief of soldiers that they can make a better job of running their country than the politicians. The military mind and the political mind are poles apart, and the rigid sense of discipline and order which is the very essence of military organisation is seldom the right recipe for solving difficult political questions. But when politicians are signally failing to solve a country's problems, there is a great temptation for soldiers to take over power and try their hands. And if the politicians are threatening to make revolutionary changes in the power structure of the country, and if the soldiers are encouraged and assisted by powerful influences from within or from outside, the temptation may become irresistible. The one country which seems to have drawn the logical conclusions from this is Costa Rica, probably the most democratic country in Latin America. It has safeguarded itself against military coups by the simple expedient of abolishing the armed forces. It should, of course, be said that there have been military coups or counter-coups aimed at restoring democracy. We saw one in Ghana when Nkrumah was overthrown. But Busia's democracy did not survive for long. More recently we have seen the military overthrow of the dictatorship in Portugal, and await its final outcome with anxious concern.

These four factors I have mentioned, as well as others, have led some of these countries to try to devise new forms of democracy, which they believe are better adapted to their situation. For example, Tanzania and Zambia, have opted for the one-party State. Before we dismiss this too readily with a cynical smile, let us remember that in most African countries parties have divided largely on a tribal basis. If the objective is to create national unity and a national loyalty that is stronger than tribal loyalty, it may well be that a multi-party system is a luxury which cannot be afforded for the time being. Both President Nyerere and President Kaunda are men with a fervent belief in freedom and democracy, but they have both opted for the one-party State. The interesting question is how much capacity for criticism and resistance there is within the single party. Let me give two examples from Tanzania which illustrate the point.

A few years ago, President Nyerere, who is a known abolitionist, introduced a measure in parliament to abolish capital punishment. The almost unanimous reaction was hostile and the Bill was thrown out. President Nyerere accepted their decision. Last year, the government in its Finance Bill proposed to raise increased taxes in ways which were likely to be unpopular. The members of parliament, perhaps feeling that if they supported the measure had little chance of being reelected, voted down the tax increase. (Although there is a single party, there are multiple candidates nominated by the party for each constituency; the electors do, therefore, have some choice, and some promising ministerial careers have been terminated or interrupted through the verdict

of the electors.) But to return to the Finance Bill: for a government to have its tax proposals voted down is a serious matter. There has to be some give somewhere, and on its occasion it was not President Nyerere who did the giving. He firmly announced that he would reintroduce the Bill and that if it was defeated again he would call a general election. The word went around that any member who voted against the Bill this time, would not be nominated again as a candidate. When the Bill was represented, its former opponents found the President's speech overwhelmingly persuasive, and the Bill passed without debate and without a vote. That may be an extreme case, but it is not the first time that parliamentarians have been influenced in their voting by a threat of dissolution.

Another country which is seeking to find new forms of democracy is Peru. In this case, there is the unusual picture of a military regime carrying out a left-wing social revolution, with a strong nationalist flavour. Earlier this year, they passed a somewhat remarkable press law, under which all the six national newspapers were taken over, but instead of being transferred to State ownership, they are each, with a period of one year, to be transferred to a board comprising representatives of a particular section of the society. One each is to go to the rural, industrial, professional, cultural, educational, and service sectors. Meanwhile, the newspapers are administered by temporary committees. The Act guarantees press freedom, and President Velasco expressly authorised the press to criticise the government. The editors took him at his word and mounted a massive campaign against

police brutality, aimed in particular at the Chief of the Security Police of Lima. The campaign was successful to the point that the police chief was removed. It remains to be seen how the representatives of the different sectors who are to control the national press will be chosen - whether they will really be freely elected and represent the views of their sector, or just be government nominees. It also remains how much freedom of expression will be allowed to the press. But at last, this initial campaign shows that it may be possible to reconcile press freedom with forms of public ownership.

When all allowances have been made for the difficulties facing some of these countries, the fact remains that in all regions of the world serious violations of human rights are occurring daily, for which there can be little or no justification or excuse. In a great arc extending from Latin America across Africa and Europe, the Middle East, the USSR and Asia, say from Chile to Korea, hundreds of thousands of people are being held in jails and prison camps for years simply because of their political views and activities, often with no charges against them, no trials, no access to lawyers, little or no contact with their families, and in atrocious conditions. In Indonesia alone there are estimated to be between 30,000 and 40,000 political prisoners, most of whom have been held now for eight years without trial, and no prospect in sight of release. In Cuba, a much smaller country, there is a similar number. In the USSR, perhaps 10,000, mostly dissident Ukrainians, Latvians, Lithuanians and other nationalists. In many countries persons under interrogation have been subjected to excruciating tortures,

administered with scientific refinement, to leave no trace on the victim.

What can be done about it? This is a question which is constantly facing non-governmental organisations like ourselves and Amnesty International, and others who work in this field. It is constantly facing the Churches, who are probably doing more than anyone in the field of human rights. It faces every individual who cares about these things and wants to do something to help.

There have been some remarkable individuals who have achieved a great deal in acting on their own, but most of us can be more effective working together in groups or organisations. Our objective must be to bring pressure on governments to mend their ways, because it is governments who have the power to end violations if they are spurred or shamed into doing so. The first task is to inform ourselves, to know what is going on, and as far as possible why it is going on. Then we have to use all means available, including the mass media to spread the information to as many people as possible, so as to stir up and arouse public opinion. This is the principal, and sometimes the only, weapon we have to hand. It may seem at times a feeble one, but there is no government, no matter how totalitarian which is not sensitive about its public image and which cannot be influenced to some extent by the force of public opinion. Naturally, this opinion is likely to be much more effective if it is weighty enough to operate through the governments of other countries, particularly those on whom an offending government is dependent for aid and support.

Let me give an example. Early in 1973 we learned that seven lawyers had been arrested in Athens as a result of acting for political prisoners, and that they were being brutally tortured in the notorious military police headquarters. A mission of three very eminent lawyers, Morris Abram, former US representative of the United Nations Human Rights Commission, your own Professor John Humphrey, and Mr. William Butler of the New York Bar Association, flew out on behalf of our organisation and the International League for the Rights of Man to make representations to the government. The government refused to see them, but the mission attracted a great deal of publicity within Greece and abroad. As I learned later, one of the consequences was very heavy diplomatic pressure by the United States government on Greece and shortly afterwards the lawyers were released. It was as a result of the action taken by people of this *standing that the US Government* was able to say to the military government in Greece: "We do not wish to interfere in your internal affairs, but when your activities provoke a reaction like this, it becomes an internal affair for us, and it affects our relations with you".

This is a barrier that frequently has to be overcome - the reluctance of governments to interfere in each other's internal affairs. Sometimes, they refer to Article 2 (7) of the Charter of the United Nations which says that nothing in the Charter shall authorise the UN to intervene in matters essentially within the domestic jurisdiction of any State. The answer to that is very simple. Gross violations of human rights, wherever they may occur, are matters of international concern, not only because they

may threaten the peace, but because they violate one of the objectives for which the United Nations exists, the promotion of human rights. Every Member State is pledged under the Charter to take joint action under Articles 55 and 56 to see that human rights are observed. The United Nations has recognised this by the procedures it has instituted to enable complaints of gross violations of human rights, wherever they may occur, to be received and examined and investigated by the UN Human Rights Commission and its Sub-Commission.

This is another field of action open to organisations such as ours - the existing machinery for the international implementation of human rights. The procedures tend to be very slow, some of them are new, and still largely untried, and none of them are armed with real teeth. Nonetheless, they are vitally important to the development of international law and it is up to all of us, through non-governmental organisations and through our own governments to bring what pressure we can to see that they are used and developed. This year the International Commission of Jurists submitted a fairly detailed report on the reign of terror in Uganda under General Amin, and according to a Reuters press report (it is all supposed to be very confidential), we understand that this has been referred to the Sub-Commission which will consider it at its meeting in Geneva in February 1975.

There are other inter-governmental organisations apart from the United Nations which will receive complaints of human rights violations and enquire

into them, in particular the Human Rights Commissions of the European Convention and of the Organisation of American States. The latter body sent a mission to Chile this year which made public some admirable recommendations for improving the legal protection of human rights in that country. This is particularly important since most of the members of the mission were delegates of other Latin-American countries.

Ours is a lawyers organisation and we naturally work primarily through lawyers. We sent a mission to Chile this year to study the system of military justice in force there. We have been glad to learn recently that our report has been cited by one of the leading lawyers in Chile, Dr. Eugenio Velasco, a former Dean of the Law Faculty in Santiago, and one of the leading opponents of the Allende regime, in an appeal which he has made to the Bar Association of Chile. He has pleaded with them to show the same determination in standing up for human rights now as they did when those rights were threatened, to a much lesser degree, under President Allende. Over 1,000 copies of his letter have, I understand, been distributed among lawyers in Chile. We find this very encouraging, though I regret that he is now being threatened with prosecution if he does not retract his statement. I must say that I would like to see more solidarity shown by professional lawyers associations for those lawyers who are suffering for their courage in standing up for human rights in these countries.

There is also considerable scope for action by members of other professions acting through their national or inter-

national organisations. There can be no doubt that the action taken by the international psychiatrists organisation at their conference in Moscow has had a useful effect in helping to secure the liberation of some political detainees confined in Soviet asylums. The protests by other medical organisations earlier this year helped to secure the release of doctors who had been arrested in Uruguay. I am convinced that there is scope for much greater solidarity of this kind.

The trade unions, of course, play a major part in the fight for human rights. The International Labour Organisation, owing to its tripartite status, including representatives of workers and employers along with governments, has far the most effective machinery of any international organisation for the implementation of human rights. There is a lesson to be learned here - of the need for the participation of non-governmental organisations in international machinery for the enforcement of human rights.

But at the end of the day, probably the most effective action we can take is to push and cajole our own governments to intervene with governments who are defying the most elementary human rights. Clearly one needs to concentrate on those countries with respect to which one's government has some leverage.

There has been an encouraging upsurge in interest in human rights issues throughout the world in then last year or two. The work of non-governmental organisations is partly responsible for this, by helping both to form

and to express public opinion on these issues. Largely as a result of political pressures, governments in democratic countries, particularly those with which they trade or have alliances, are more ready to make interventions with respect to them, often privately but not necessarily less effectively on that account.

The striking change in tone in recent speeches of South African ministers, the flow of immigrants who have been permitted to leave the Soviet Union and the much greater number, who, it seems, may be permitted in future, the fall of the dictatorial regimes in Portugal and Greece, the return to civilian government in Argentina, some helpful signs of a possible move towards greater liberalisation in Brazil, all these are encouraging developments which at least in part are attributable to external pressures. Of course, there have been other factors at work, not least internal pressures within these countries. One claim, however, can certainly be made. The active concern of people outside these countries has given hope, encouragement and assistance to those inside them who have striven to bring about greater respect for and observance of human rights. Non-governmental organisations active in this field have had many moving expressions of gratitude for the actions they have taken.

Canada is a country which can, I believe, play an important role in this field. Whilst belonging to the Western world and deeply respecting its traditions, Canada, like Australia and New Zealand, has the advantage of being a younger country which has itself gained its independence, and which has succeeded in winning the confidence and friendship of many of the Third World countries. We have been greatly encouraged both by some of the initiatives your government has taken in the international field and by the very striking concern of ordinary citizens in your country about human rights issues in many parts of the world.

I know that the Canadian Human Rights Foundation is primarily concerned with the field of human rights within your country, but the fact that you have invited persons such as Mrs. Sipela and myself to this Conference shows that you realise that, like peace, human rights are indivisible. Concern for one's fellow human beings cannot stop short at national frontiers. It is a great privilege to have addressed you, and I hope we may find opportunities to continue working together in the cause which unites us, safeguarding the rights of the individual everywhere in dignity and liberty under the law.

Human Rights and the Churches

Niall MacDermot

Address to the Annual General Meeting
of the Catholic Institute for International Relations,
London, 18 June 1976

It was with real pleasure that I accepted this invitation to speak on Human Rights and the Churches. It is nearly six years since I began working in the international field on behalf of human rights. During that time I have become increasingly aware that it is often the Churches which play the greatest part in their defence and promotion, particularly in countries where human rights are consistently and systematically violated. Sometimes they are almost alone in doing so.

I am speaking primarily of the Christian Churches. Two years ago I attended a conference in Louvain of the World Conference on Religion for Peace, a non-governmental organization which brings together members of all the leading religions of the world in the cause of peace and related subjects, including human rights. One of the things which struck me was how much better equipped organizationally the Christian churches are than other religions to take action in this field. This is not to decry the contribution made by other religious leaders, but when there is a need for coordinated, speedy and effective action at the international and international levels, it is particularly the Christian Churches who have the means available and the will to use it.

What I have been saying can be illustrated from Rhodesia, where it is

the Christian Churches who, almost alone among the small white minority, have maintained a campaign in favour of human rights. There are opposition political parties within the white minority who could have championed this cause if they had chosen to do so. But even those who favour a more liberal policy towards the Africans have not been prepared to challenge the government about the brutalities and excesses of the security forces towards the Africans. Perhaps they have been afraid of incurring electoral unpopularity if exposed to the kind of abuse which the Minister of Law and Order, Mr. Lardner Burke, saw fit to direct at the Churches. In an obvious reference to the Catholic Justice and Peace Commission he said: "There is a fifth column at work which on the face of it appears to stand for justice and peace and so forth but which in reality has much more sinister objectives." On another occasion, in rejecting a demand for a commission of enquiry into alleged atrocities, he said: "It is the usual ploy of those who are indoctrinated by the Communist Code."

Whatever the reason for the silence of the opposition parties, it was left to the Christian Churches to collect and publish, with your assistance, information about the torture and ill-treatment of suspects and the demoralizing and dehumanizing effects of the way in

which Africans have been crowded into the so-called protected villages. The Catholic Justice and Peace Commission has been in the lead in this, but it has been very much an ecumenical activity with close cooperation between Catholics, Anglicans, Methodists and other Churches.

It is right to say that African leaders have also denounced these violations but naturally this does not make the same impact within the white community as statements by their own church leaders. Also the Africans do not have the same links with the outside world, so as to be able to mobilize external pressure upon the government. Indeed, in this particular case, it was to me somewhat surprising and depressing to find how sceptical the African leaders were about the value of trying to do this. They had known for years what had been going on, but they did not see any point in trying to document and transmit abroad this information. There would, no doubt, have been risks for them in doing so. But it is not, I believe, primarily the risks involved which have deterred them. This reason is a sadder one. Disillusioned by the ineffectiveness of the United Nations action against the illegal regime, they do not see how activities of this kind can help at all towards their liberation. In this, I am sure, they are profoundly mistaken, but it is a sad reflection that this should be their attitude.

It is perhaps an extreme case. Other African liberation movements in Southern Africa have had much closer contacts with international human rights organizations. Nevertheless, they are seldom equipped to collect and dis-

seminate the kind of accurate and continuous information which is required to enable an effective pressure of public opinion abroad to be built up.

The Churches have one great advantage in Rhodesia. They have, in the missionaries and mission schools, representatives throughout the African areas who are closely in touch with the people and know what is happening to them and what they are thinking. We had a vivid illustration of this same point in quite another region of the world when our mission went to Chile in 1974. We were received by Cardinal Raul Silva just after the remarkable public statement by the Catholic Bishop's Conference denouncing the use of physical and psychological tortures during interrogations. He told us that two days earlier General Pinochet had tried to dissuade him from publishing this, adding "Anyway, it isn't true." The Cardinal reply to this was: "General, there are two organizations in this country who know what is going on, the Carabineros and the Church, and the reason is the same. In each case we have our man in every street and in every village and nothing can happen without our knowing about it. If the Church tells you that these practices are occurring, you have got to believe it." Evidently, General Pinochet did believe it, since, on a later occasion, he defended the practice to Bishop Helmut Frenz, saying "How else can we make them sing." Cardinal Raul Silva also told us on this occasion that whereas there had been a minority of the bishops who doubted the wisdom of their Conference making a public statement of this kind, there was not one who disagreed with the facts of the arbitrary arrests and torture and ill-

treatment of suspects. On that there was unanimity.

The Churches: Cooperation and Contribution

These two examples indicate some of the reasons why the churches are able to and do make a unique and vital contribution to the promotion of human rights. They have access to reliable factual information about what is happening; their word is generally credible in these matters in a way that that of interested political organizations is not; they usually enjoy a certain immunity from repression at least in professedly Christian countries (there are, of course, limits to this; it is not unusual to find priests imprisoned in some of these countries), and finally they have channels of communication to interested persons and organizations outside their countries who are ready to help them.

These points could be illustrated from almost every region of the world. To an important extent it is the Churches who have drawn attention to and supplied information about torture practices, arbitrary arrests and detentions, harassments, threats, physical attacks and assassinations carried out by security forces, or, in some cases, their para-military or para-police associates, in places as far apart as Korea, the Philippines, South Africa, Chile, and Brazil, to name but a few.

Usually, one of the Churches is in the lead, generally the Church with the largest following among the oppressed, but it is striking in how many cases this

activity is the occasion for ecumenical inter-church cooperation. Among examples which spring to mind are the Committee for Cooperation for Peace in Chile and the Christian Institute in South Africa. The Committee for Cooperation for Peace came into existence at the initiative of the leaders of the Catholic and Lutheran Churches and of the Jewish community. It provided a legal aid and advice service which helped thousands of political prisoners, as well as workers who had been dismissed from their jobs owing to their political beliefs. It organized relief and assistance to their families. It collected and collated accurate and reliable information about the repression in Chile and supplied it to many visiting missions from abroad. The Christian Institute in South Africa, with support from all the leading Christian Churches apart from the Dutch Reformed Church, seeks to promote inter-racial understanding and to find solutions compatible with Christian principles to South Africa's social problems. It has also produced accurately documented information about the repression in South Africa, as well as a remarkable series of reports and studies with positive proposals for advancing the status of Africans. It is led by one of the great Christian leaders of our times, Dr. Beyers Naudé, a former pastor of the Dutch Reformed Church, which disowned him when he accepted the directorship of the Institute.

In each case, the repressive governments concerned have rightly seen these bodies as a serious challenge to their position, and have done all they can, or all that they think expedient, to discredit them and restrict their activities. In neither case could the

authorities prosecute them for any offence, as they had kept strictly within the law. In Chile the Committee has been closed down, not by any lawful procedure but simply by beginning to arrest and detain its staff under the state of siege (the head of the legal department has been expelled from the country) and by General Pinochet writing a letter to Cardinal Silva telling him that the committee must cease its activities.

In South Africa the action taken has been more subtle and more sinister. The Christian Institute was subjected to an examination by the notorious secret inquisition known as the *Schlebusch Commission*. This was a parliamentary Commission (in which to their discredit the opposition United Party participated), which was set up to investigate allegedly subversive organizations. It sat in secret and it was an offence to publish anything that was said before the Commission. Members of the suspected organizations could be summoned to be interrogated by the Commission under oath, without knowing what charges had been made or what evidence had been led against them. They were not entitled to the assistance of a lawyer and it was a criminal offence to refuse to answer questions. In these circumstances Dr. Beyers Naudé and other leaders of the Christian Institute refused to testify, making clear that they would be willing to do so in open proceedings subject to the normal safeguards and principles of the Rule of Law. They were all duly prosecuted and convicted and the protracted appeal proceedings are not yet completed.

This Commission eventually produced a report which sought to smear the Institute with the suggestion that it supports violent change and therefore constitutes a danger to the State. The report was described in a leading article in the *Cape Times* in these words: "It is about the worst document of its sort we have ever set eyes on, when judged by criteria of unsubstantiated assertion, guilt by association, unveiled innuendo and jumping to conclusions."

The government, however, was so pleased with this instrument of calumny that it now introduced a Bill to establish a permanent commission of this kind and to give itself power to impose indefinite detention without trial on security suspects.

As well as cooperating between themselves, the Churches in these countries often work closely with lawyers who share their concern to assist the victims of oppression and to see a restoration of human rights under the law.

The Role of the Legal Profession

The role of the legal profession varies greatly from country to country. In all countries there will be at least a small minority of lawyers who know what is going on and who are involved in defending victims. These tend to be a group of younger lawyers who practise largely in criminal work. They are not among the most influential or powerful members of the profession. In some cases they are politically sympathetic to the victims, if only because in places where there are acute political divisions

and tensions it is rare to find lawyers willing to act for suspects on the other side of the political fence. This becomes something of a vicious circle. The lawyers get identified with their clients and consequently subject to the same kind of harassment and persecution. In Argentina, for example, it is not unusual for defence lawyers to have bombs thrown into their offices, to be threatened with assassination if they do not leave the country, and even at times, to be assassinated without being offered this option. Where these defence lawyers are left to themselves without support from the leaders of the profession, the establishment lawyers, they are at great risk. The leaders of the profession either do not know what is going on or do not want to know. It is not an unusual experience for me when meeting the heads of the profession in such countries to find that I know more about what is going on in their countries than I do. I remember clearly a strenuous discussion I had in 1972 with a member of one of the leading firms of commercial lawyers in Uruguay who simply would not believe the things I told him. Two years later, when things had gone worse, and even his respectable clients were getting tortured for suspected currency offences, he admitted that I had been right and he had been wrong.

When the leaders of the legal profession strip off their blinkers and find out what is really going on and are prepared to stand up and support those of their colleagues who are involved in the day-to-day struggle, they can play a really important role in defence of human rights. I think, for example, of the Council of the Federation of Colleges of Advocates in Brazil, a most influential body which has consistently

and publicly protested against the violations of human rights occurring in Brazil, and has taken energetic action in support of colleagues who have been persecuted. Another example is Pakistan, where the most distinguished members of the profession have led the struggle for liberty. Under the military dictatorship of Ayub Khan they literally went out into the streets, carrying banners and demonstrating against unjust laws and practices.

The same applies, I think, to the Churches. When those in positions of greatest responsibility are prepared to deploy all the force of their authority in support of the minority of their members, for it is usually a minority, who are actively engaged on behalf of human rights, it not only adds greatly to the effectiveness of their action but gives some protection to those who by their activities may be risking harassment and vilification, if not actual persecution.

So far I have been talking about the work of the Churches in the countries where there is systematic violation of human rights. Before coming nearer home perhaps I should make clearer to what human rights I am referring.

When lawyers speak of human rights they tend to think in particular of the traditional civil and political rights, freedom of speech and expression, freedom of association and assembly, a free press, freedom from arbitrary arrest, the right to a fair trial, freedom of communication, freedom of movement, and so forth. Western trained lawyers believe that these rights achieve their highest attainment when safeguarded

by a pluralist parliamentary democracy, by an independent judiciary and by well-known legal remedies, such as *habeas corpus*.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights, as I am sure you know, includes not only these traditional civil and political rights but also the basic economic and social rights inherent in the concept of social justice, such as the right to work with fair remuneration and equal opportunity, without discrimination, trade union rights, the right to social security, family rights, the right to adequate standard of living and health, the right to education, the right to participate in the cultural life of the community. These two sets of rights have been spelt out in greater detail in the two International Covenants of Human Rights, the Civil and Political and the Economic, Social and Cultural, which have both, after many years, just received the 35 ratifications needed to bring them into force. Many of us feel very relieved that the United Kingdom has become one of the ratifying States.

I believe that churchmen will readily understand this interaction of economic, social and cultural rights, and the civil and political rights. They see them as one whole because they see each single individual as a whole, and all mankind as a whole, whose unity in peace and love they pray and work for. The growing sense of responsibility of the churches for action in the field of human rights is striking. Let me give a few quotations to illustrate the point.

On March 15 of this year Cardinal Stephen Kim of Korea preached a sermon during a Mass in the Cathedral in Seoul for priests and other Christians detained by the Korean police after a prayer meeting held on March 1 in the same Cathedral. In his sermon he said of those arrested:

"I believe that their fundamental interest was in social justice and the protection of human rights before any interest in political systems. As a matter of fact, this is the teaching of the Church. The 1971 Synod of Bishops' Statement on justice in the World taught that the Church must do her best to realise social justice and made it clear that 'work for the realization of justice is a constitutive part of the mission of the Church.'

The Synod of Bishops states in its message on the Protection of Human Rights issued in 1974 that 'the protection of human rights is today one of the Church's greatest missions.' In addition, the social teachings of successive generations of Popes and the teachings of the Councils emphasize that the Church must understand salvation, not in the old, narrow sense of 'saving souls', but in the broader sense that the Church must devote herself to making every country, in fact the whole world, more human in Christ. Therefore, the Church must do her best to plant the Gospel spirit, justice and love deep in every sphere of society - political, economic and cultural."

On 7 December 1973, on the occasion of the 25th anniversary of the

Universal Declaration of Human Rights, a Joint Statement was issued by Dr. Philip Potter for the World Council of Churches and Cardinal Roy for the Pontifical Commission Justice and Peace. Two of its main points were:

"We appeal to local churches, and particularly to Christian leaders and educators, to initiate or intensify programmes of instruction and sensitization on human rights and corresponding duties so that every person, regardless of race, religion, class or nationality, may be aware of the qualities of human life to which he is entitled."

and:

"Together we must promote and defend human rights in each of our own respective societies. And in solidarity with all those who struggle for freedom and justice we must identify our efforts to remove the root causes of human suffering wherever it occurs."

Plainly, action can be taken at different levels. At one level it can be a matter of charitable work to bring succour to victims of oppression as well as to victims of poverty, disease and ignorance. The work of missionaries in the field of education and the work of the great relief organization is an all important activity in support of human rights. Others will be drawn to remedial action aimed at persuading or inducing authorities who are violating human rights to moderate their actions and make their rule more humane. For

others again, their concern about justice will lead them to search for the political means to tackle the underlying causes of injustice.

In the International Commission of Jurists we describe ourselves as a non-political organization, meaning that we are not identified with any particular party or ideology and seek to look objectively at the situation concerning human rights under all political and social systems. But we are well aware that everything we say and do has political implications. It is impossible to make any meaningful contribution to the protection of human rights in any country without some understanding of the political background and the political forces involved. And it is equally impossible to take any effective action in support of human rights without one's actions having political repercussions. We cannot, as lawyers, shirk the fact that the struggle for human rights is inevitably a political activity.

There are, of course, many lawyers who refrain from acting because they consider the matter "too political." But this decision to do nothing where there is a possibility of action is itself a political act in favour of the *status quo*. The same dilemma must face churchmen as it faces lawyers. Equally, to have a too strict juridical approach to human rights tends to make them defensive instruments to protect that which exists, giving human rights an essentially static character.

The field of possible action is enormous, and obviously there must be a selection. Each individual and group must decide about its priorities and

what action is likely to be most fruitful or effective. Those present at the St. Pölten consultation of the World Council of Churches, held near Vienna in October 1974, formulated their current priorities in the field of human rights under six headings, which you may find of interest. They are:

The right to basic guarantees for life, including the right to work, to adequate food, to guaranteed health care, to decent housing, and to education for the full development of the human potential;

The rights to self determination and to cultural identity and the rights of minorities;

The rights to participate in decision-making within the community, calling for structures of governments at all levels to 'become more responsive to the will of all the persons belonging to the various communities,' especially women and the young;

The right to dissent which 'preserves a community or system from authoritarian rigidity.' It is essential to the vitality of every society that the voices of dissenters be heard and that their right to hold opinions without interference, to freedom of expression and the right to peaceful assembly be guaranteed;

The right to personal dignity, for example [freedom from] physical or psychological attacks on the human person;

The right to religious freedom which should, nevertheless, not be used to claim privileges. For the Church, this right is essential so that it can fulfil its

responsibilities which arise out of the Christian faith. Central to these responsibilities is the obligation to serve the whole community.

Conclusions: Supporting Human Rights

Let me turn now to the final part of this address in which I shall try to suggest some possible fields for action and ways of increasing the effectiveness of the Churches in support of human rights. If this sounds presumptuous and even impertinent, I can only plead that I was specifically asked to do so.

I shall speak mainly of the way in which Churches in Western countries can aid those who are struggling against oppression and injustice in other countries, for this is the field in which I am particularly involved. This does not, of course, mean that I am suggesting that there are no human rights problems within our own countries which require the attention of the Churches. Far from it. One need only mention the agonizing conflict in Northern Ireland, or the deep problems of racial discrimination, to see how much there is to do at home. Much of what I have to say about helping our brothers and sisters abroad can be adapted without much difficulty to human rights issues at home.

The essential strategy in the field of human rights is based on three propositions derived from the experience of organizations operating in this field. These are that there is no government in the world which is not susceptible to

pressures of public opinion, that these pressures are most effective when they can operate through other governments, particularly those on which the offending government depends for aid, trade and arms; and that, at the least, outside pressure always gives encouragement and hope to those who are struggling within the country concerned against the system of oppression. Even if dictatorial governments are able to stifle opinion internally, they cannot stifle what is said abroad, and with modern means of communication a great deal of that will penetrate the sound barrier of censorship and control.

The Use of Information

The starting point of all action is gathering and disseminating reliable, accurate and objective information. As I have indicated already, the Churches have exceptional, and in some cases, unique opportunities to perform this function. Information is needed not only about the violations of human rights which are occurring, but the context in which they occur and the basic causes of them. Violations such as arbitrary arrest and imprisonment, torture, rape, deportation, enforced incarceration in mental hospitals, or kidnapping and assassination of political opponents do not occur in a vacuum. To quote from a report of last year's Nairobi conference of the World Council of Churches, "The basic causes for these violations are to be found in an unjust social order, the abuse of power, the lack of economic development and unequal development. This leads to violations of unjust laws

and rebellion by the dispossessed, to which political and military forces of 'law and order' respond with cruel repression." So information is required not only on the violations themselves but on the laws and structures which support them and the basic causes of the unrest which they are designed to repress.

To collect this information requires organization. It will usually mean visits to the countries concerned or inviting visits from them urging and encouraging, and perhaps giving financial assistance to the local Churches to gather the needed information in a continuing and systematic way, with precise data. They, in turn, need to establish links with lawyers, economists, social scientists and others who can help them to collect and collate this information. It will also mean establishing contacts and regular channels of communication. On the basis of this information, well-prepared studies and reports can, with the assistance of the mass media, help to enlighten informed opinion upon particular situations, as well as serving the basis for other actions.

The second field of action is promoting human rights by teaching their spiritual significance, educating people at all levels on the religious and moral basis of human rights, economic, social and cultural, as well as civil and political, and stressing the need for adequate legal procedures for their protection. These include, of course, religious freedom and freedom of conscience, not as a special privilege for the Churches but as an inseparable part of fundamental human rights.

Information: The Role of the Churches

Thirdly, the Churches can seek ways to intervene in particular situations so as to make felt their concern and the weight of their moral judgement and spiritual authority. This action can take place at all levels and there is a great scope here for imaginative and novel modes of action. The action should be aimed in three directions, to influencing the directly offending government, to influencing public opinion in one's own country and abroad, and to influencing the parliaments and governments of one's own or friendly governments who may bring pressure privately or openly upon the government concerned. Let me give you an example which illustrates the point. About a year before the fall of the military dictatorship we learned that seven lawyers in Greece who had been acting for and advising students had been arrested and were being severely tortured in the notorious ESA military interrogation centre in Athens. Our organization sent to Greece a mission of three very distinguished lawyers from across the Atlantic, a former US representative to the UN Commission on Human Rights, a Canadian Professor who was former Director of the UN Human Rights Division, and a leading member of the Bar of the City of New York. They were not received by government ministers, but they did see many colleagues and friends and families of the arrested lawyers. Before they left they held a press conference in Athens denouncing these arbitrary detentions and tortures, and they held another on their return to New York. The mission attracted considerable attention, especially in the American

press. Shortly afterwards the lawyers were released. Some time later we learned that the US government had, following this mission, made the strongest diplomatic representations they had ever made on a human rights issue to the Greek government. They were able to do this by saying to the Greek government, "We have no wish to, interfere in your internal affairs, but when your actions provoke a reaction of this kind among the most prestigious lawyers in our country, this becomes an internal matter for us and affects our relationship with you." I am sure it was this intervention by the State Department which had the desired result. Among the lessons to be learned from this episode is that it is usually only by arousing public opinion that one is able to overcome the reluctance of governments to intervene in what they choose to regard as each other's internal affairs.

I take this example from our own experience, but there have been many cases where fact-finding or other missions have been sent by Churches, in which distinguished church leaders have been able to make a considerable impact upon a particular situation and draw public attention to it.

It is impossible to lay down fixed rules about the type of action which will be most effective. Each situation must be judged upon its merits. Sometimes it is better to act publicly, by an open and fearless denunciation of outrageous actions; on other occasions a more temperate expression of concern, or even a private intervention without publicity will have more effect. Again, it is sometimes better to act alone, sometimes to act jointly with

members of other churches or human rights organizations. In any event, it is always well to maintain close contact with other organizations, so that even if each acts in its own name, there is the cumulative effect of an orchestrated campaign. On occasions it may be better to work through other organizations. We have not infrequently been approached by churches to send an Observer to an important political trial which is of concern to them or to send a mission to study a particular situation, and I know that there is also close cooperation between Churches in many parts of the world and Amnesty International and the International Committee of the Red Cross on behalf of prisoners of conscience.

All the traditional methods of lobbying can be employed. My experience as a member of the House of Commons for ten years and then working for nearly six years in the ICJ has shown me that we still have a lot to learn from the United States in this art. Of course, their Constitution and parliamentary procedures, in particular the work of the Congressional Committees, help a great deal. But I believe that much more political pressure on human rights issues could be built up in the British Parliament, either by an all-party group or perhaps more effectively within each party. I am sure that pressures by the Churches upon MPs could help to bring this about.

A more direct way in which the Churches can assist victims of oppression is by helping to organize legal aid for them and relief for their families, either in relation to particular cases, or by raising the funds to finance

a local body such as the former Committee for Cooperation for Peace in Chile. Fund-raising is not only a most practical form of help but is also a valuable means of educating people on human rights and developing their sense of responsibility about them.

A fourth field in which the Churches could help is the development of what is called, perhaps rather optimistically, the international implementation of human rights. This is a subject for a lecture in itself, or a series of lectures. Briefly, the object is to break down the rigid barrier of the doctrine of national sovereignty. This finds expressions in Article 2, paragraph 7 of the UN Charter, which says that nothing in the Charter shall authorise the UN to intervene in matters which are *essentially* within the domestic jurisdiction of any State, or require members to submit such matters to settlement under the Charter. The word 'essentially' is usually omitted when governments quote this paragraph. It is, of course, accepted that the UN can act in human rights situations which constitute a threat to peace, and it is under this provision that sanctions were imposed against Rhodesia. It is also now accepted that a situation in which there is "a consistent pattern of gross violations of human rights" is a matter of international concern not falling within the exclusive domestic jurisdiction of the particular State. And, very remarkably, there is a procedure in the UN Human Rights Commission, known as the Resolution 1503 procedure, under which individual victims, or concerned non-governmental organizations, can bring complaints before the Commission through one of its subordinate bodies. It is not as yet a very

effective procedure, but it is another way of bringing pressure upon governments and it is worth developing.

Information: UN and Regional Bodies

There are also other procedures which can be used. Under the International Covenant on Civil and Political Rights a new Human Rights Committee is about to be set up which will be able to receive and consider complaints of violations of the Covenant brought by individual victims against governments which have ratified the Optional Protocol to the Covenant, or complaints made between governments who have made an Article 41 declaration agreeing to submit to this procedure. Although the United Kingdom has ratified the covenant, it has not ratified the Optional Protocol or made an Article 41 declaration, and I suggest that members of Parliament should be asked to press the government to do so.

There is much else going on in the Human Rights Commission on which governments could be pressed to take positive action. For example, there is the Draft Declaration on Religious Tolerance, which has got bogged down in interminable delays, and the Draft Statement of Principles on the Protection of Persons in all forms of Detention, which seems to have more steam behind it, and which could be a useful follow-up to the Declaration on Torture made last year by the UN General Assembly.

In addition to the United States, there are also regional bodies concerned with human rights, the European and the Inter-American Human Rights Commission, and it is to be hoped that similar bodies will in time be formed in other regions. The Inter-American Commission has a particularly flexible procedure and is ready to receive complaints about violations from any source. For example, its enquiry into one of the most remarkable human rights documents compiled by an intergovernmental organization, was initiated by complaints made to it by our organization and by Amnesty International very shortly after the coup. There is no reason why a religious organization in this country should not file a complaint with the Commission based on information received from Churches within that continent, when those Churches would not have the freedom of action to file the complaint themselves.

I hope I have said enough to indicate the vast scope there is for action by concerned individuals and organizations in the field of human rights. For reasons which I have tried to indicate I believe that the Churches and organizations such as yours inspired by religious beliefs and values can play a role which is second to none. Our own organization has been very gratified and encouraged by working with you in recent months and I hope that many other opportunities for cooperation will arise. There can never be too many operating in this field, but to operate successfully requires qualities of concern, courage, commitment and candour, qualities which the Churches are eminently qualified to bring to bear.

Human Rights and Peace

Niall MacDermot

Extract of a Speech given on 16 January 1985 on receiving the Wateler Peace Prize
at the Peace Palace in the Hague
on behalf of the International Commission of Jurists.

There are several dimensions to the relationship between peace and human rights.

First, and most obviously, every act or threat of military aggression is a violation of the Charter of the United Nations, is a crime against humanity, and is a gross violation of the most fundamental of all human rights, the right to life.

"In the United Nations, as well as in regional intergovernmental organisations, there exist international procedures for enquiry into gross violations of human rights; but no-one has yet thought it fit to present complaints, or as they are usually called, 'communications', relating to acts of aggression. We are still a long, long way from the Rule of Law in international affairs. The international Court of Justice is now seized of a complaint by Nicaragua against the United States for the mining of its principal port but no-one has brought before the World Court the invasion of Iran by Iraq, of Afghanistan by the Soviet Union, of Israel's bombing of the nuclear plant in Iraq or its invasion of the Lebanon, of the invasion of Kampuchea by Vietnam, of Uganda by Tanzania or of Grenada by the United States, to quote only some examples.

These last three pose an agonising question - how can the international community come legitimately to the assistance of a people whose basic human rights and fundamental freedoms are being grossly violated by a tyrannical government which has seized power by force and has itself little if any legitimacy. The fact that we have no answer to this question illustrates the anarchic nature of the world of sovereign Nation States in which we live. The solution must surely lie in some form of legitimate international action rather than in self appointed unilateral intervention.

Another variant of this type of intervention is the assistance given to dissident forces operating from a neighbouring country and seeking to overthrow the regime in their own country. In the view of international lawyers such support is legitimate given to liberation forces recognised as such by the United Nations, such as those seeking to liberate Southern Africa from its racist *apartheid* regimes.

Another dimension of the relationship between human rights and peace appears when violations of human rights provoke internal armed conflicts, or conflicts which begin as internal and later spill over to become international, as in Central America. Such conflicts

frequently, if not usually, result from gross violations of human rights. Examples are conflicts resulting from brutal and intolerable repression, denial of the right to self-determination, an unjust social order which enables a ruling *élite* to exploit impoverished masses, religious persecution, racial discrimination, or oppression of minorities. Where such violations occur without any legitimate means of redress, either before the courts or by democratic processes, recourse to force is almost inevitable, and in some cases legitimate. As the oft quoted paragraph in the preamble to the Universal Declaration of Human Rights puts it: 'it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and repression, that human rights should be protected by the rule of law.'

It is customary now for governments that have provoked rebellion in one of these ways to denounce all such uprisings as terrorism. At times rebel forces do have recourse to terrorist methods, striking not at the forces or representatives of the government they wish to overthrow, but striking indiscriminately at civilians, seeking to sow terror in the hearts and minds of the population at large. Terrorism is a particularly heinous and gross violation of human rights, and terrorists have done untold damage to the cause of human rights. They have often led to reactionary governments, frequently military governments, which suppress all human rights in their efforts to overcome terrorism. This is of little concern to the terrorists, who tend to regard human rights as a bourgeois facade to a regime they seek to overthrow. They seldom succeed in overthrowing the

regime by these methods, but they often succeed in destroying what they consider to be its bourgeois facade.

This leads me to a third dimension of the relationship between peace and human rights, namely the use and abuse of declarations of emergency. The existence or the threat of armed conflict almost always results in a declaration of an emergency. The existence or the threat of armed conflict almost always results in a declaration of an emergency, sometimes called a state of exception, or a state of siege. With these emergency powers the government claims the right to suspend the greater part of the human rights inscribed in the Constitution or laws of the country. A detailed study we have made of these declarations shows that under their cover, many of the worst violations of human rights occur, including in particular those rights that are supposed to be non-derogable even in times of emergency, such as freedom from torture or from extra-judicial killings, the current euphemism for murder by security forces. Moreover, the emergency regime tends to continue in force long after the rebellion or threat of rebellion has been overcome, thus converting what was supposed to be a temporary measure into a continuing or permanent dictatorship.

What conclusions can be drawn from all this? In what I have to say now, I shall be expressing personal opinions with which the members of our Commission may or may not agree. As a lawyer, I would say it is true that if we are to achieve peace we must achieve an effective system for protecting universal human rights under the Rule of

Law. In my personal view this is hardly possible as the world is structured at present. For the great violators of human rights are sovereign governments, and although we have an impressive body of international law, including human rights law, which should govern our governors, the reality is that when they choose to be a law unto themselves, there is no effective power to stop them. The lawyers did not serve mankind well when they formulated the concept, or should I say the fiction, of the sovereign Nation State. The great obstacle to peace is the immense concentration of power in the Nation State, especially when fed by fanatical nationalism.

The task before us is to find the way to diffuse that power. It needs to be dispersed in two directions. Firstly, downwards to the provinces, to the communities and ultimately to the individuals who constitute our nations, so that our democracies are based on the sharing of power, on a real participation of the people in the ordering of their affairs. And secondly, upwards to the continents or regions, and ultimately to Tennyson's dream of 'the Parliament of Man, the Federation of the World'. The Universal Declaration of Human Rights begins with the assertion that 'recognition of the inherent dignity and the equal and alienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.

The positive aspects of nationalism enormously enrich our human family. The glory of mankind is its rich diversity of races, nations, cultures and

languages. Heaven forbid that we should seek to merge them all in one cosmopolitan mix. But great as our nations are, they are not sufficient ends in themselves. Rather, they are different members, different organs if you will, of the human family. Essentially, they are partial and instrumental. The only absolutes are the single individual everywhere, and the total human community, the *Grand Etre* of Auguste Comte. A person whose horizons are limited by his national frontiers is not fully human. I was told once by a Chinese friend that there is a saying which all Chinese children are taught to repeat as soon as they can speak. It says that all people within the four seas (by that is meant all people on earth) are brothers and sisters. This should be the beginning of our education.

We may accept this vision in theory, but how do we begin to make a reality of it? How will it enter into our consciousness, so that we cease to shun and even hate foreigners, peoples of other races, creeds, religions, classes or societies, simply because they are different?

We need the vision and the leadership to transform the United Nations into a true World Order, in which every community, every people, every nation will receive its due, and find its expression and fulfilment. This is the path to peace, as well as to the enjoyment of human rights under the Rule of Law, the cause to which our organisation is dedicated. We are immensely grateful that it has received recognition by the award of this prize."

Speech

Given Before the European Parliamentary Assembly

Niall MacDermot

on the occasion of the award of the
first European Human Rights Prize
Strasbourg, 28 January 1981

May I on behalf of the International Commission of Jurists express our profound gratitude for the distinction which you have conferred upon us by the award of the first European Human Rights Prize. This medal and scroll will occupy a place of honour at our headquarters, alongside our copy of the signatures to the European Convention on Human Rights. One of those is the signature of my predecessor, Mr. Sean MacBride, who as Foreign Minister of Ireland played an important part in helping to bring that Convention into existence.

Your Convention was the first and is still the most effective of the international instruments for the protection of human rights. Its example has recently been followed by the coming into force of the Inter-American Convention, and the signs are hopeful that an African Convention will follow before too long. Experience seems to show that human rights conventions made between members of the same regional family tend to be more precise in their provisions and more effective in their application than universal ones.

We are all the more grateful for this award, when we recall that our activities in recent years have focused principally upon problems of the Third

World, rather than those of Europe. In past years we played an active part in helping to mount the case against the Greek colonels before the European Commission, and in supporting the struggle of the Spanish and Portuguese people to be freed from their dictatorships. More recently we have been promoting an Optional Protocol to the Draft Convention against Torture which we are very encouraged to learn was approved yesterday by this Assembly. But as I say, the main thrust of our work is with developing countries, and we feel that the grant of this award to us reflects your own active concern to promote human rights not only within your own region but throughout the world.

In our promotional work in developing countries we have come to concentrate very largely upon the complex relationship between human rights and development. We find that even among development economists, who formerly regarded human rights as an irrelevant and disturbing distraction, there is a growing awareness that respect for human rights is an essential part of any real development programme. Development means development of the human person, in dignity and freedom, so that each one can realise his potentiality in a truly human

community. Development is a cultural and civic concept as well as an economic one.

As our President, Mr. Kéba Mbaye of Senegal, has said: "A country in which human rights are not respected is an underdeveloped country."

We shall be pursuing this theme at our next Commission Meeting and Conference at the Hague in three months time.

After working for more than a decade in the field of human rights I have become increasingly aware of the different and complementary roles of non-governmental organisations, of parliaments and of governments in the promotion and protection of human rights. Governmental action is usually the most effective, but governments tend to be restrained by political considerations and by the principle of non-interference in the internal affairs of other countries. Non-governmental organisations and parliaments have greater freedom and can play an important role in awakening public opinion in their own countries to violations occurring elsewhere. In time this can enable their governments to state with truth that the violations in question have become an internal matter for them and are affecting their relations with the countries concerned. Inter-governmental pressures can then be exercised, often in private, with considerable effect. In this continuing process we have greatly welcomed the many open and vigorous positions taken by this Assembly with regard to violations of human rights in other regions. It is always difficult to establish cause and

effect where there is an improvement in human rights, but I believe that the recommendations of your Assembly have played a significant part. They certainly give great encouragement to the victims and to those striving for greater freedom within the countries concerned.

Our organisation exists to promote the Rule of Law. We believe, in the eloquent words of the Preamble to the Universal Declaration of Human Rights, that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law".

For us the Rule of Law means not merely that the actions of government shall be subject to the law and to the scrutiny of an independent judiciary. It means also that the content of the law shall give effect to the principles of human rights and fundamental freedoms. The Rule of Law ensures the legal protection of human rights.

Both the formulation and achievement of human rights is a continuing and dynamic process. There is no static and universal model. Human rights in different parts of the world can be assessed and promoted only within the context of the societies concerned, with their different cultural heritage and economic and social systems. We seek to be sensitive to these differences, and not to impose a purely European or Western concept of human rights. For example, we recently co-sponsored with the University of Kuwait and the

Union of Arab Lawyers an important seminar on 'Human Rights in Islam'. Nevertheless, it is an immense source of encouragement to us that our work should have been recognised in this way by this distinguished Assembly

and by the governments of the Council of Europe, the continent in which the very concept of human rights was born.

Thank you Mr. President, and thank you all.

Speech Given Before the UN Headquarters

Niall MacDermot

Geneva, 29 November 1980,
the International Day of Solidarity with the Palestinian People

I feel very honored to have been invited to speak once again on this occasion. May I begin by saying, as I did last year, that I speak in my personal capacity.

At the beginning of this year I visited for the first time the occupied territories of the West Bank and Gaza. Most of those whom I met were lawyers, but I am glad to say I had the great pleasure of meeting Mayor Shak'a in his office in Nablus, shortly after he had been permitted to return to it. His present condition and his fierce courage have become a symbol for his people.

Last year I spoke mainly about the legality, or rather the illegality under international law, of the Israeli settlements and the deportations of Palestinians. There has been no abatement of either. It has now been revealed that the number of Israeli settlers in the West Bank has increased in the last three years by no less than 500%. And the deportation of the Mayors of Hebron and Halhoul and of the President of the Hebron Sharia Court were shown to be illegal in Israeli law as well as under international law.

On this occasion, may I draw your attention to a document which the International Commission of Jurists has recently published jointly with its affiliate in the West Bank, Law in the

Service of Man. It contains an analysis of the Military Orders issued by the Israeli military government in the last 13 years. It is written by two members of our affiliate, who are both lawyers living in the occupied territories. As I have pointed out in the preface, it is a work which could only have been prepared by West Bank lawyers, because only they, or rather some of them, have anything like a complete set of the orders. The orders are not published regularly in the press or in any official journal or gazette. They are nowhere on public sale. There is no library where they can be studied. Newly qualified lawyers who asked for a set have been told that they are not available, a remarkable assertion in the day of photocopying machine.

Under international law an occupying military power is supposed to leave in force the laws and the administration of justice as they were before the occupation, save in so far as it is necessary for them to be amended in the interests of the security of the occupying forces. This study, entitled *The West Bank and the Rule of Law*, sets out to show that the Israeli military government has gone far beyond this, with the effect and presumably the intention of subordinating the economy of the West Bank to that of Israel and facilitating the illegal settlements in the area. Above all this has been done by altering the laws, and the

administration of the laws, relating to land and water resources, so as to take them out of the jurisdiction of the Arab courts and put them firmly under the control of the military authorities. This has helped to achieve the result that approximately 30% of the entire area of the West Bank is now in Israeli hands. Already three years ago, 30% of all the water discharged from wells in the West Bank was taken from 17 modern wells constructed to serve the Israeli settlers, while Arabs were denied permits to construct similar wells.

Strict controls are applied to imports to Israel of West Bank products. Agricultural produce, the area's main resource, can only be exported under a system of permits which establish the quantity of each approved crop, the Israeli market to which it may be brought, and the description of the truck to transport it. By contrast, the West Bank is a free market for Israeli producers, conveniently close for dumping their excess produce, even including articles forbidden in Israel for contravening safety or health regulations.

In Gaza I was told that the Arab citrus fruit producers are not allowed to compete with Israeli producers in the more lucrative markets of Western Europe. They can export only to the markets of Eastern Europe, and they have to do so by first trucking their produce to Amman.

It would be interesting to know how all this is justified on grounds of military security. I am glad to say, however, that reports of this publication have been able to appear in the Arabic, English and Hebrew press in Jerusalem.

What struck me most in reading this study was the graphic way in which it shows how the whole society and economy in the occupied West Bank is being run down, and going to seed, while the population is constantly humiliated and driven to despair. What future confront their youth - to go to work as manual labourers or as waiters in Israel; to accept the indignity of their situation; to protest and demonstrate and have bullets fired at their legs for throwing stones; or to choose to emigrate with no right to return?

I am sometimes struck by the parallel between the attitude some years ago of my fellow lawyers in European countries towards the peoples of their colonies, and that of some of my Jewish colleagues towards the people of the occupied territories. Western lawyers are very proud of their legal systems and the protections they afford to their cherished liberties. Many of them thought that they had conferred a great benefit on their colonies by introducing these systems of law, and could not understand why they failed to win the grateful cooperation of the colonised peoples. What they did not appreciate was that the law as administered in the colonies was a very different law to that at home. It was an imposed system to protect the ascendancy of the imperial power, its settlers and businessmen, while those who opposed it were repressed by states of emergency, emergency regulations, administrative detention, the denial of civil and political rights and; above all, the right to self-determination. Those who led the struggle for independence were denounced as terrorists with whom they could have no dealings. Israelis likewise have a fine system of law for

their own people in their own country. Many of their supporters see their administration in the West Bank in the same light, as if they were conferring a benefit upon the people by their civilised administration. Unfortunately they appear blind to the fact that the denial of all human rights and fundamental freedoms which really matter, the constant humiliations and indignities to which the people are subjected, the denial even of their very existence as a people, is building up a wall of hatred which represents a greater danger for the future of the Israeli people than terrorists' bombs.

What makes me fear for the future, for the future of peace, and for the future of Israel, is the apparent determination of those in power in Israel to expand further their frontiers and to deny the same right of self-determination to the Palestinian people as they claim for themselves under the doctrine of Zionism. It makes me fear, but not despair, because I have hopes that wiser counsel will prevail in Israel. There are many there who also fear the implications of the present expansionist policies and who would wish to come to an accommodation with the Palestinians before it is too late.

I have been reading recently an impressive publication of the Washington Middle East Institute entitled *Perceptions of the Palestinians on the West Bank and on the Gaza Strip* written by a well-known student of Palestinian affairs, Ann Lesch. She shows clearly how unacceptable to the Palestinians are the so-called autonomy proposals of the Camp David Agreement. She lists, however,

a set of conditions she has extracted from discussions with Palestinians, which she believes could serve as the basis for an acceptable transition period, if, and it is a big if, the people of Israel could bring themselves to recognise the legitimate rights of the Palestinians, and accept the idea of self-determination for the Palestinian people and their eventual right to erect their own sovereign State.

Among the conditions she puts forward are those of adequate financial resources and powers for the ruling councils; authority over land and water resources, the police, judiciary and prisons; a freeze on further settlements; free passage of people and goods across Jordan; an international airport in the West Bank and a seaport in Gaza; the right of refugees to return in a phased programme; confining Israeli forces to specific points on the Jordan and observation posts on the central mountain range, with internal security in the hands of a Palestinian police force; East Jerusalem to be recognised as the capital of the eventual Palestinian State, Jerusalem remaining open physically with separate Arab and Israeli municipalities, and a joint coordinating committee for certain services.

Such conditions would have to be worked out through detailed negotiations, in which the PLO should be included. No doubt proposals of this kind would be resisted by many in Israel, but perhaps there will be statesmen who will see that they offer a greater security for the future of Israel than the increasing bitterness flowing from a continuation of the present occupation.

The Erasmus Prize (1989)

Decision and Grounds of Granting

In accordance with Article 2 of the articles of association of the Praemium Erasmianum Foundation concerning the annual award of one or more prizes to honour individuals or organisations whose contributions in the cultural, social or social science fields have been of outstanding importance to Europe,

His Royal Highness Prince Bernhard of the Netherlands confirmed the decision of the Board of the Foundation to award the Praemium Erasmianum for the year 1989 to The International Commission of Jurists.

President: W.F. Duisenberg

Secretary: H.R. Hoetink

The Erasmus Prize 1989 for Human Rights is being awarded to the International Commission of Jurists

- because the ICJ does its utmost to foster the independence of the judiciary and the legal profession throughout the world;
- because the ICJ is unrelenting in its efforts to support national networks of jurists in order to defend and strengthen the "Rule of Law";
- because the ICJ, notably in the Third World, provides knowledge and resources, through training and education to people and organisations defending the rights of the poor and deprived, thus enabling them to act more effectively;

- because the ICJ plays an important role in drafting and elaborating texts of international treaties in the field of human rights and makes a point of supervising enforcement of existing treaties;
- because the ICJ contributes to promoting and protecting human rights where these are in grave jeopardy through the delegation of research missions and publication of findings;
- because the quality and the objectivity of the ICJ is beyond all doubt, so that the ICJ has proved itself a worthy representative of the Erasmus tradition.

The Erasmus Prize

(1989)

Laudation by H.R.H. Prince Bernhard of the Netherlands

The United Nations Charter includes among its objectives the achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian nature and the promotion and encouragement of respect for human rights and fundamental freedoms for all, irrespective of race, sex, language or religion. Man had to come a long way to arrive at this Charter. Respect for human rights goes hand in hand with our democratic way of thinking, a thinking that is based on the awareness of human dignity, on a feeling of responsibility and solidarity, and on the conviction that all people are of equal value.

The relationship between democracy and inalienable individual rights clearly emerged a long time ago when the Athenian statesman Pericles delivered his famous funeral oration. Pericles was referring specifically to an individual's equality before the law – in this case men only – in terms of civil rights and freedoms.

We can trace the fascinating relationship between the individual and government or community throughout the whole of European history. Everyone remembers the year 1215 in which the English King John was forced to agree to *Magna Carta*, thus curtailing the divine right of kings in

favour of certain personal rights. From the seventeenth century we have the Petition Rights, the Habeas Corpus Act and the Bill of Rights, while we in the Netherlands proudly refer to the *Placaat van Verlatinghe*, dating from 1581. The fundamental change, however, came only in the eighteenth century.

The eighteenth century saw a radical break with all pre-existing attitudes which had in fact been based on the Christian sense of sin, belief in authority and the group ethic. They were replaced by a high level of self-awareness and individualism. The new ideology lent the concept of human dignity real substance, alongside the familiar feeling for universal humanity deriving from the Christian tradition.

Without the idea of human dignity, the Declaration of Rights of Virginia and the subsequent American Declaration of Independence of 1776 and the "Déclaration des droits de l'homme et du citoyen" of 1789 would have been inconceivable.

The concepts of humanity and human dignity are also the foundation of the International Commission of Jurists which we are honouring here today.

This non-governmental organisation has as its goal the promotion of understanding and respect for the law and legal protection of human rights in the world. The way in which you, Mr. MacDermot as present Secretary-General, together with your devoted but rather tiny staff in Geneva, have sought to achieve these objectives deserves the highest praise. Since 1952, the year in which the organisation was founded, numerous congresses and conferences have been held throughout the world on the principles of the Rule of Law. Valuable academic studies and penetrating reports appear in the *Newsletter* and in the bi-annual *Review*.

It is thus that reports have been published on the Hungarian insurrection, the Chinese invasion of Tibet, the Berlin Wall, Spain, Cuba, *Apartheid*, Brazil, East-Pakistan, Uganda, Chile, and about numerous other countries and situations. Some years ago, the 'African Charter of Human and Peoples' Rights was drafted as a result of two seminars held in Dakar. Recently, the European Convention against Torture came into force which stipulates for one thing that lawyers and other observers must be allowed to visit prisons in contracting party States, which is expected to have an important preventive impact.

A revision of the Mental Health Act was recently introduced in Japan. This was a significant event, because in Japan patients are often concealed in an unacceptable way by their families, who are convinced that mental deficiency is hereditary. Nor had patients in

psychiatric hospitals any right or opportunity to appeal when they were involuntarily committed for many years. And finally, to give another example, you introduced the first international instrument on the Independence of the Judiciary on which work had been done for many years and which was adopted in 1985 at the Seventh Congress on the Prevention of Crime and Treatment of Offenders and endorsed in that year by the United Nations General Assembly.

Now, most countries contend that they have an independent judiciary, but in many, if not in the majority, practice proves otherwise. The International Commission of Jurists does all it can to promote the independence of the judiciary throughout the world and has sent observers for instance to trials in South Africa, Tunisia, Yugoslavia, Greece, Denmark, Sierra Leone, Malaysia, Singapore, Senegal, Mauritania, Algeria, Israel, South Korea and Pakistan. But you are not only active in addressing issues in the field of civil rights and political rights, but also in cases of flagrant economic or social injustice or where groups of people are the victim of discrimination such as psychiatric and AIDS patients.

Your authority rests on your broad international base in which, regrettably, up to now not all countries are represented; I am thinking of the Eastern European countries. Your influence is based on the thoroughness and impartiality of your verdicts and reports. Of special importance is the influence exercised by the Commission in recent

years on the Rule of Law in countries becoming independent in the course of the decolonisation process.

I should not fail to mention the high quality of your successive Secretaries-General. I should like to mention in this respect our compatriot, Bart van Dal, who was the first to head your organisation, his successors and your predecessor, Seán MacBride, who did such inspiring work through his creative contribution to the International Law of Human Rights.

We realise how difficult your work is when you clash with the sovereignty of States in making an issue of a violation of human rights or wish to prevent this happening or condemn aggressive acts. You yourself said on one occasion: "The great obstacle to peace is the immense concentration of power in the Nation State, especially when fed by fanatical nationalism; great as our nations are, they are not a sufficient end in themselves." Rightly you asked yourself, in accepting the Wateler Peace Prize in 1985 in The Hague, how the international community can legitimately intervene when the freedom of a nation or its human rights are violated by a tyrannical government or by the aggression of another country – often under the pretext of a liberation movement – as long as the "anarchic nature of the world of sovereign States" continues to exist.

Going over the effectiveness of your campaigns, a process which plays no negligible role is what is referred to as the "Mobilisation of Shame", the mobili-

sation of public opinion as a means of exerting pressure. Often, your organisation has thus been able to embarrass those involved, and this has produced very often mitigating and corrective measures.

A telling example was the activity of the International Commission of Jurists – which I have already mentioned – which resulted in the revision of the Japanese Mental Health Act. But in situations which we reject on the grounds of our views on human rights, the problem remains that the deepest questions relating to our convictions and our views of man are ultimately existential ones which do not lend themselves to verification by log or reason. These differences in convictions are deeply rooted; every individual assumes that his truth has universal validity. As far as respecting the otherness of other human beings is concerned, we still have a long way to go in religion and in politics.

In today's world, however, we are often compelled to join forces, not only on the grounds of our ethical convictions but increasingly for pragmatic reasons. The winner of the 1987 Erasmus Prize, Alexander King, demonstrated this using ecological examples. If we are to survive, the same must apply in politics. Zia Rizvi, Secretary-General of the Independent Commission on International Humanitarian Issues, in a recent speech compared our world to the human body, all of which suffers if a part of it is ill or damaged and which must resort to action if it is to survive.

Today it is a great pleasure for me, Mr. MacDermot, to be able to present you with the Erasmus Prize for the International Commission of Jurists just before you step down as Secretary-General. I am glad to hear not this year, so we still have some time. Nobody has led the organisation for longer and with so much success. We know with you that we are only at the beginning of a hopeful future which, to judge by some changes in our world, would seem to lie ahead.

Perhaps out of necessity, a new feeling for humanity and human rights is on the horizon, a feeling – let us hope – that includes the whole of mankind and contributes to enriching the sense of world consciousness. It is because the International Commission of Jurists is contributing to this development that I have the honour and the pleasure of presenting you with the 1989 Erasmus Prize.

The Erasmus Prize

(1989)

Acceptance Speech by Niall MacDermot

It is a great honour to receive on behalf of the International Commission of Jurists this prestigious prize. Our members greatly appreciate the award which adds our name to the list of individuals and organisations of outstanding distinction who have received the Erasmus Prize.

Under your statute the prize is awarded for contributions to European culture. As a lawyers' organisation devoted to the promotion and protection of human rights under the Rule of Law, we are heartened to have our work recognised as a contribution to culture. It is a double honour and a challenge for us to receive a prize bearing the name of Erasmus. For us, as for future generations, he will always be recognised and remembered as the greatest humanist of the Renaissance.

We believe we are only the second human rights organisation to have received this prize, the first being our colleagues of Amnesty International.

For those interested in the law, and in particular international law, the creation and development in the last 40 years of international human rights law is an extraordinary and unparalleled achievement. Last year, we have cele-

brated the 40th anniversary of the adoption of the Universal Declaration of Human Rights. In those 40 years, there has been a continuous flow of new international legal instruments. The United Nations Centre for Human Rights has recently published a book containing the text of 67 United Nations human rights conventions and declarations defining human rights in different fields, and in many cases providing procedures for their enforcement. The process is still continuing, and we hope that the Draft Convention on the Rights of the Child, on which we have worked for many years, will shortly be adopted by the General Assembly. In addition, there has been a similar flow of regional human rights instruments in Europe and in the Americas, and we may expect a similar development in Africa following the coming into force of the African Charter of Human and Peoples' Rights.

It has been an exciting and rewarding task for us to have been able to contribute as a non-governmental organisation to this process of standard setting, as it is called. The fact that we have been able to do so is indicative of the immense change in international law. Until the Second World War, international law was an exclusive

prerogative of Nation States. The individual human being and non-governmental organisations had no place in public international law. All that has changed. The contributions of organisations like ours to developing human rights law is now welcomed. We are grateful for the assistance we have received in this work at the European level from members of our Netherlands national section, particularly those in the law faculties of the Universities of Leiden and Utrecht.

I hope it will not be out of place if I try to summarise briefly some of the turning points in the evolution of our policies and activities during the last 35 years of our existence.

Broadly speaking, the work of the International Commission of Jurists has since its inception been divided between the promotion and development of human rights under the Rule of Law on the one hand, and on the other hand investigating and publicising violations of human rights, and giving what assistance we can to their victims.

Apart from making representations to governments about individual cases of violations which have been brought to our attention, we have sent missions to many countries in Asia, Africa, Latin and Central America to examine in depth violations occurring in them, and publishing their findings in our Review or in special reports. These reports have often made a considerable impact, both in the country concerned and in other countries which can be persuaded to

bring pressure upon the offending State.

We have also made a regular practice since 1962 of sending distinguished jurists as observers to trials. These not only help to ensure a fairer trial for the accused, but their reports give us a better understanding of the administration of justice in those countries.

We also take the opportunity to make interventions based on all these reports in the meetings of the UN Commission on Human Rights and its Sub-Commission. We also bring them to the attention of regional intergovernmental organisations in Europe, in the Americas and now in Africa.

Our work for the promotion and protection of human rights under the law began with a series of Third World congresses in Asia, Africa and Latin America between 1955 and 1962. This was during the period when many former colonies of the imperial powers achieved their independence. Most of the lawyers in these countries had been trained in Western systems of law, but the law which their countries inherited was colonial law. The purpose of our congresses was to invite the lawyers of these countries to formulate their principles in their new States for the protection of human rights in their regions under the Rule of Law. Their conclusions were published by the ICJ under the title Human Rights and the Rule of Law in a handbook which is still quoted in articles by Third World jurists. All this was done before the United Nations had got beyond the Universal

Declaration and the formulation of human rights, and it is anticipated many later developments in the United Nations.

The next stage from 1962 to 1975 saw, among many other developments, the beginning of NGO contributions to standard setting at the Teheran Conference in 1968 under the leadership of my predecessor, Seán MacBride, and the forceful intervention by our and other non-governmental organisations in the Council of Europe and the Organisation of American States when human rights were being grossly violated under the military dictatorships in Greece and Chile.

The third stage was marked by a decision of our Commission meeting in Vienna in 1977 to approve a seminar in Tanzania on Human Rights in a One-Party State. It had by this time become clear that very few of the new independent States were going to adopt or maintain a system of parliamentary democracy on the Western model. The rest tended to be under military or other authoritarian rule or one-party States. If we were to have any influence in these countries, we had to be ready to discuss human rights under their systems of government. In consequence, we held this seminar on human rights in a one-party State, and this was followed by a series of seminars under different regimes in the Caribbean, in Senegal, in Latin America and in Kuwait, discussing the Rule of Law under the system of government in each of their regions.

Another major decision at Vienna was to create a Centre for the Independence of Judges and Lawyers, on the grounds that it was of little value to educate people about their human rights if, when it came to the crunch, the judicial system proved unable to enforce those rights owing to improper pressures from the administration. This Centre has been holding very effective seminars for judges and lawyers throughout the Third World. In the past year it has held an international conference on this subject in Venezuela, a regional seminar in the Caribbean and national seminars in India, Nicaragua, Pakistan and Paraguay, and one is now taking place in Peru.

At the following Commission meeting in The Hague in 1981, it was decided that we should relate our work in the Third World to development and deepen the understanding of the role that lawyers can play in the development process. This led to our holding since 1982 of a series of seminars in Asia, Africa and South America on the provision of legal services in rural areas. There are no lawyers in the villages, where 60 to 90 percent of the population live, and the villagers have little if any knowledge or understanding of their rights. Inspired by the example of some groups working in South and South East Asia, we proposed the training of "paralegals" to live with the rural folk, to educate them about their rights and to help them to assist and claim those rights. Where possible, they should work with grassroots development organisations which have the confidence of the people. For the last

seven years we have promoted this scheme in all three continents, and we have recently produced a handbook on the training of paralegals. We are greatly encouraged by the fact that some human rights organisations in several of these countries have asked for permission to translate this handbook into their own languages and to distribute them widely.

Our next Commission meeting was held in Kenya in December 1985, and was combined with a conference on the proposed African Charter of Human and Peoples' Rights. The Charter had to be ratified, there was a lull for a year and a half with no further ratifications. The purpose of our conference was to stimulate action for obtaining the necessary number of ratifications. As a result of the conference and its follow-up activities the requisite number of States had ratified in a little over six months.

To indicate the variety of our work let me mention three other activities which have recently come to fruition after many years of work in which we can claim to have played a decisive part. These are:

- 1 the coming into force this year of the European Convention for the Prevention of Torture which we drafted and promoted together with the Swiss Committee against Torture;
- 2 the amendment of the Japanese Mental Health law in 1987, to give mental patients for the first

time some basic legal rights and procedures for their implementation, and

- 3 the Basic Principles on the Independence of the Judiciary, already referred to, approved by the United Nations General Assembly as the first international instrument on this subject. The General Assembly requested all nations, where necessary, to bring their legislation and practice into conformity with its provisions. We are now working closely with the UN on a set of principles on the independence and role of lawyers.

I should add that over the years we have recognised some fifty national sections and affiliated organisations which are entirely independent but which contribute greatly to our work in Europe, in the Americas and in Africa and Asia. Among these are two particularly active organisations we have helped to bring into existence, the Andean Commission of Jurists and Al Haq in the Occupied West Bank of Palestine.

If I can end on a more personal note, I should like to pay tribute to the work of our small staff of six lawyers, five secretarial assistants and a part-time administrative officer. They have worked indefatigably to organise and carry out the programmes approved by our Executive Committee. Their reward has certainly not been monetary. Rather it has been the stimulating nature of the work, the opportunity to make friendships

with exceptional and courageous people in many parts of the world, and a deeper understanding of the problems facing others, especially among the poor and disadvantaged.

The receipt of this award on behalf of the International Commission of Jurists is for them, as it is for me, a culmination of many years of inspiring work.

November 1989

On 29 May 1996, the House of Deputies of the Republic of Argentina passed a resolution paying tribute to Niall MacDermot:

The National House of Deputies

Resolves:

To express its condolences for the passing away of British jurist Niall MacDermot, tireless defender of human rights around the world.

[This resolution] expresses how important the ICJ's work in the field of human rights has been for democracy in Argentina.

Ildefonso M. Thomsen

Advisor to the President, Human Rights Committee
House of Deputies,
Republic of Argentina

The American Association
for
The International Commission of Jurists Inc.

At a regular meeting of the Board of Directors held at 599 Lexington Avenue, New York, on Wednesday the 6th day of March 1996, the following resolution was unanimously adopted:

Whereas Niall MacDermot, Q.C., faithfully and vigorously served the International Commission of Jurists and the cause of the international enforcement of human rights; and

Whereas the directors and members of the American Association for the ICJ were edified by his leadership and remain deeply affected by his personality and his commitment;

Now therefore the following resolution is unanimously adopted with the recommendation that the President of the American Association forward a copy thereof to Mrs Ludmila MacDermot:

Resolved that the American Association for the ICJ express its heartfelt tribute to Niall MacDermot, Q.C., a titan in the field of the Rule of Law; and

Further resolved that the American Association for the ICJ hereby records its respect for Mr. MacDermot's many contributions to liberty and human rights of people everywhere and its belief that the world is better off because he lived.

In witness whereof this resolution is executed on behalf of the Board of Directors this 6th day of March 1996.

signed: Donald T. Fox
Chairman of the Board

signed: William J. Butler
President

Members of the International Commission of Jurists

President

Michael D. Kirby, AC, CMG,

Judge, High Court of Australia;
President, Court of Appeal of the Solomon Islands

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Member of the Constitutional Council, Senegal
Advocate; UN Special Rapporteur on the Independence of Judges, Jurors and Lawyers; Malaysia
Judge, Substitute - Chief Justice of Mauritius; Member, UN Human Rights Committee
Director, Korean Legal Aid Centre for Family Relations, Republic of Korea
Deputy High Court Judge, Hong Kong
Professor of Social Law, France
Advocate at the High Court, Tanzania
Investigator-General, Zambia
Advocate; former Member of Parliament, Indonesia
Former Judge at the Interamerican Court of Human Rights; Professor of International Law, Venezuela
Professor of Public Administration; Expert for the UN Working Group on Enforced Disappearances, Austria
Judge at the International Tribunal for the Former Yugoslavia, Costa Rica
Former Supreme Court Judge, Pakistan
UN Coordinator, Regional Political & Security Cooperation;
Adjunct Professor, Columbia University School of International Affairs (New York), Guyana
First Deputy Ombudsman, Spain
Former Senator; President of the Organisation *New Human Rights*, Argentina
Judge; President Constitutional Court of the Republic of Hungary
Professor of International Law, Switzerland
Professor of International Law, University of Berlin;
Member, UN International Law Commission, Germany
Professor of Law; Member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, Japan
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Secretary General

Adama Dieng

Recent ICJ/CIJL Publications

Attacks on Justice

The Harassment and Persecution of Judges and Lawyers

Published by the CIJL in English and French. - 370 pp. Geneva 1996. CHF 25.- plus postage

This seventh annual report of the Centre for the Independence of Judges and Lawyers states that between January and December 1995, at least 337 jurists in 51 countries suffered reprisals for carrying out their professional duties. Of these, 23 were killed, 4 were "disappeared", 36 tortured, 142 detained, 30 attacked, 58 received threats of violence and 44 professionally sanctioned or obstructed. The report examines structural problems in domestic legal systems that threaten the independence of the judiciary and the legal profession around the world. It also catalogues the cases of individual judges and lawyers who are harassed and persecuted in countries in all continents.

The Participation of Non-Governmental Organizations in the Work of the African Commission on Human and Peoples' Rights - A Compilation of Basic Documents

October 1991 - March 1996

Published by the ICJ in English and French. - 259 pp. Geneva 1996. CHF: 15.- plus postage

From 1991-1996, and in cooperation with the African Centre for Democracy and Human Rights Studies, the ICJ organized a series of ten workshops designed to encourage NGO participation in the African Commission on Human and Peoples' Rights (ACHPR). The workshops were held prior to the ordinary sessions of the ACHPR. During these workshops, Conclusions and Recommendations were made for special consideration by the ACHPR (Part I of this compilation) which, as the case may be, took follow-up actions (Part II of this compilation). Actions were also taken by the Assembly of Heads of State and Government of the Organization of African Unity (Part III of this compilation).

ICJ Workshops on NGO Participation in the African Commission on Human and Peoples' Rights 1991 to 1996 - A Critical Evaluation

Published by the ICJ in English and French. - 108 pp. Geneva 1996. CHF: 12.- plus postage

This report is an evaluation of the NGO workshops organized by the ICJ since 1991 prior to the ordinary sessions of the ACHPR (it is a companion book to the Compilation - see above). The report which highlights some "successes" and challenges was finalised to coincide with the celebration of the 10th anniversary of the entry into force of the African Charter on Human and Peoples' Rights on 21 October 1996, to assist both the NGOs and the ACHPR in designing activities for the future.

Human Rights: the Rights of the Indigenous Peoples

Report of an International Seminar in Bolivia

Published by the ICJ in Spanish. - 188 pp. Geneva 1996. CHF: 15.- plus postage

This is the report of a Seminar which was held in Cochabamba, Bolivia, in March 1996. The Seminar was organized jointly with the Andean Commission of Jurists and the *Centro de Asesoramiento Legal y Desarrollo Social* (Bolivia). The Report comprises the contributions of different organizations on: the current situation of agricultural organizations and indigenous communities in Bolivia; legal concepts in the context of a multinational and pluriethnic State - national laws and the indigenous question; international mechanisms for the protection of indigenous peoples' rights and conventional mechanisms for the protection of human rights within the UN system.

Seminar on Economic, Social and Cultural Rights

Published by the ICJ in Spanish. - 167 pp. Geneva 1996. CHF: 15.- plus postage

This is the report of a seminar which was held in Bogota, Colombia in May 1996, and jointly organized by the ICJ and the Colombian Commission of Jurists. The seminar and publication constitute a Latin American follow-up activity to the 1995 Bangalore Conference on Economic, Social and Cultural Rights and the Role of Lawyers.

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