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Closing Remarks

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Abstract

This closing remark contains the text of John Salter's speech closing the conference organized by the Human Rights Institute to commemorate the Fiftieth Anniversary Celebration of the International Bar Association.

CLOSING REMARKS

*John Salter**

Mr. President, Distinguished Speakers, Ladies and Gentlemen, I would like to commend the Human Rights Institute for presenting this significant, challenging, and closing program as part of the Fiftieth Anniversary Celebration of the International Bar Association and to thank all our excellent speakers and our audience for stimulating discussion.

The legal community including, of course, the IBA, as "the most influential nongovernmental legal organization in the world," has a great deal to contribute over the next quincade to the development of Human Rights. I recall the words of the Under-Secretary-General for Legal Affairs, Mr. Hans Corell, when he said that:

We must achieve implementation of a law that is already in being; we must remember that human rights are universal and fully applicable to all states; and we have a special role in identifying abuses and proposing workable solutions.¹

Mr. Corell has issued us all a clear challenge to take appropriate action. It must be a matter of concern to all of us that some countries are not complying with their international obligations and fulfillment of the mandate of the two ad hoc Tribunals.

The challenge of the international humanitarian law, so well described by Madame Justice Louise Arbour,² is a forceful one. It has been taken up by at least one regional organization, the European Community, in recently adopting three financial instruments:

Regulation 1292/96 on food aid policy;³
Regulation 1257/96 on humanitarian aid;⁴ and
Regulation 2258/96 on rehabilitation and reconstruction operations in developing countries following war, civil

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1. See Hans Corell, *The United Nations and the Legal Community in Promotion of Human Rights*, 21 *FORDHAM INT'L L.J.* 519 (1997).

2. See Madam Justice Louise Arbour, *Progress and Challenges in International Criminal Justice*, 21 *FORDHAM INT'L L.J.* 531 (1997).

3. Council Regulation No. 1292/96, O.J. L 166/1 (1996).

4. Council Regulation No. 1257/96, O.J. L 163/1 (1996).

strife or natural disasters.⁵

There is also a proposal, recently re-examined in Document COM(97)6, for a Regulation on operations to aid uprooted people in Asian and Latin American developing countries, reflecting President-Elect Shestack's⁶ concern for establishing a better law of asylum.

Lawyers have, as explained by President Fali Nariman,⁷ responsibility for seeing that the rule of law prevails especially as regards individuals. The special role, privileges, and duties of the legal profession are to be considered by a Working Party on Professional Services of the World Trade Organization, and the IBA will have important input in this area over the next few years. We have to differentiate ourselves from accountants, engineers, architects, and other professions. We bear a heavy responsibility. Much is expected of us.

The law, however, may well need clarification and development to meet changing situations and standards. Judges can play a major role, protected in manner advocated by Secretary General Adama Dieng⁸ of the International Commission of Jurists, namely by their individual and collective independence. The IBA should work with the ICJ to keep hard cases under review.

Judges can indeed help the development of human rights. A significant example, if I may be permitted to give just one, is the construction of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁹ by the European Court of Human Rights in its judgment in the case of *Lopez Ostra v. Spain*.¹⁰ In that case a treatment plant (constructed with the aid of State subsidies) for liquid and solid tannery waste was sighted on land given by the local council only twelve meters from the applicant's home. When started up, it was unlicensed

5. Council Regulation No. 2258/96, O.J. L 306/1 (1996).

6. See Jerome J. Shestack, *Globalization of Human Rights Law*, 21 *FORDHAM INT'L L.J.* 558 (1997).

7. See Fali Nariman, *International Human Rights and Sovereignty of States: Role and Responsibility of Lawyers*, 21 *FORDHAM INT'L L.J.* 541 (1997).

8. See Adama Dieng, *Role of Judges and Lawyers in Defending the Rule of Law*, 21 *FORDHAM INT'L L.J.* 550 (1997).

9. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221, Europ. T.S. 5.

10. Case 41/436, [1993] E.C.R. 515 (Eur. Ct. H.R. Dec. 9, 1994) (to be published at 303-C Eur. Ct. H.R. (Ser. A) (1994)).

and emitted pestilential fumes and smells. Local residents were evacuated. The applicant claimed, under Article 8, that the inaction of the local council regarding the pollution from the plant constituted a violation of her rights under the Convention to respect for her home and family life. The Commission unanimously found a breach of Article 8. On referral to the European Court, it was held:

- (i) that hydrogen sulphide emissions might endanger the health of nearby residents;
- (ii) that Article 8 applied where there was severe environmental pollution affecting the well-being of individuals even where health was not seriously endangered;
- (iii) that in deciding whether a State had breached its duties under Article 8(2) regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole;
- (iv) that the State enjoys a margin of appreciation which was taken into account;
- (v) that there had been a breach of Article 8 and therefore the applicant be awarded four million pesetas' compensation under Article 50 as 'just satisfaction' together with a sum for costs and expenses.¹¹

What is the significance of this case? Is it the beginning of the development of a right to a clean environment? It demonstrates the Court's concern to ensure respect for the individual and human dignity.

President-Elect Shestack posed the rhetorical question "what is the rule of law except human rights?" He stressed globalization and public opinion aspects. Certainly environmental considerations do not respect man-made boundaries. Next week, in this place, the U.N. General Assembly will be holding a Special Session on updating the Rio Conclusions and Agenda 21. Tomorrow, in its birthplace, the IBA Council will have before it a model Convention on the Human Genome, which is concerned with respect for the individual and human dignity. Lack of a current common legal approach with regard to the Human Genome raises questions in the fields of public health, human rights, bioethics, world environmental policy, and global economic development. The draft Convention, a copy of which was handed

11. *Id.*

by our President to the U.N. Secretary General, gives guidance to countries around the world struggling to develop appropriate legal standards:

So what lies in store for lawyers during the next fifty years? The Human Rights Institute has embarked on a marathon. It will be leading legal thought for the next decades.

Lawyers will have to learn to pace themselves to keep up with the ever increasing power of computing and progress of communication. They will be using the Internet to give wide publicity to matters of concern because lawyers who have joined the IBA are charged with the promotion and enforcement of human rights under a just rule of law, which can, if the independence of the profession is protected worldwide, cope with crises.

The IBA will be pressing for the worldwide adoption and implementation of harmonized standards and legal instruments. This is the essential work of the Institute supported by UNWOC, the Committee which I chair.

Individual lawyers will be expected to respond, most importantly, by exercising their influence over decision-makers, in demonstrating personal commitment to engendering confidence which creates stability, and in helping to finance much needed appropriate endeavors.

In conclusion, Mr President, as was said last Wednesday, "the world needs lawyers more than the world is willing to admit."

