INTER-REGIONAL CONFERENCE ON JUSTICE SYSTEMS AND HUMAN RIGHTS
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CONFERÊNCIA INTER-REGIONAL SOBRE SISTEMAS DE JUSTIÇA E DIREITOS HUMANOS
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CONFERENCIA INTERREGIONAL SOBRE SISTEMAS DE JUSTICIA Y DERECHOS HUMANOS
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CONFERÊNCIA INTER-REGIONAL SOMBRE SISTEMAS DE JUSTICA E DIREITOS HUMANOS

CONFERENCIA INTERREGIONAL SOBRE SISTEMAS DE JUSTICIA Y DERECHOS HUMANOS

CONCLUDING SESSION 20 SEPTEMBER 2006

STRENGTHENING THE JUDICIAL ROLE IN THE PROTECTION OF HUMAN RIGHTS - AN ACTION PLAN

The Hon Justice Michael Kirby AC CMG[*]

BEYOND TERRA INCOGNITA

Why are we here? Why did so many judges and lawyers from different continents gather in Brasilia for this inter-regional conference on justice systems and human rights? Why collect so many participants from different linguistic and cultural backgrounds? Different legal and judicial traditions? Different economic and social circumstances? What could we possibly hope to achieve? Was there not wisdom in the fact that, never before, had there been such an encounter between judges and lawyers of South America[1] and judges and lawyers from common law countries of Europe, Africa, Asia and Australia? Was the explanation of the past distances

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1 I have avoided use of the expression "Latin America" which originated in the nineteenth century and is contested in some quarters. See Jeff Browitt, "Neo-feudalism and the Rhetoric of Development in Latin America" (2006) Australian Academy of Social Sciences, *Dialogue* No 25, 10.

between us that we really had little in common and insufficient to warrant an expensive gathering here in Brasilia?

At the outset, I would say that the scepticism inherent in these questions has been displaced by the discovery of commonalities that have surprised us. In the plenary sessions, and in the working groups, we have found that many of the problems that each of us faces in courts and legal practice in our own countries have parallels that are remarkably similar to those of other lands. We are living in an extraordinary age of globalism. In such an age, lawyers who, traditionally, have been confined in the intellectual restraints of their own jurisdictions, must suddenly explore common links shared with professional colleagues far away. It is because we had the conviction that such links would be found, if only we searched hard enough, that we all came to Brasilia and tasted the warm hospitality of our Brazilian hosts.

Yet in saying this, I do not wish to understate the initially unpromising features of our endeavour. To most Australian judges and lawyers, and I would imagine most from other common law countries, South America seems a kind of terra incognita. We in Australia are very familiar with this notion. When the early navigators from Portugal, and later the Netherlands, France and ultimately England came to the Great South Land that is Australia, they described it first as terra incognita. It was an unknown place - mysterious, unexplored, unfamiliar - with new flora and fauna and indigenous peoples who had been cut off from other civilisations for millennia. If Australia was terra incognita to the rest of the world, South American has been terra incognita for most of us in the English-speaking world.

The difficulties of finding common ground were all too apparent as we contemplated this conference. The difficulties of languages in South America itself presented a challenge to those whose common link across the continents is the English language. But even though we could be helped to bridge that gulf by the expert interpreters who brought our minds together, the legal cultures of the common law world and those of the civil law tradition practised in South America separated us, as if by a great divide. Simply put, we conceive of law in different ways. Your system has been profoundly influenced by the Napoleonic reforms and the codes

that introduced principles of rationality to the exclusion of the form of common law traditions of Latin speaking peoples. We, in the English speaking world, are the children of the common law of England which continues to flourish and to provide practical solutions to everyday problems, offered by the judges within the confines established by general principles and, increasingly, parliamentary legislation.

In the common law world, the judges of the higher courts are not usually members of a judicial *cadre*, educated in special schools after receiving their university degrees in law. Instead, they are, typically, senior advocates who are chosen to offer a portion of their careers in the judiciary. They do not look upon themselves as government servants. This has strengthened their sense of independence from government and indeed from all external sources of power. They work in a long tradition that involves close study of the writings of the judges who went before. Very few of them indeed, are professors or senior officials (as may often be the case in the civil law tradition). Instead, they are senior practitioners and very proud of that fact.

Moreover, the way our judiciaries work is often very different. In the common law tradition, we follow the general principles of the law of precedent. The rulings of higher courts lay down principles that judges in lower courts must follow obediently. The elaboration of reasons is more discursive. In appellate courts, there is a tradition of *seriatim* opinions. Truthfulness and candour in the expression of the real reasons for decision are a hallmark of this tradition. To judges of this background, the more precise and succinct reasoning of the higher courts of the civil law systems seem more dogmatic and less transparent. To judges of the civil law tradition, the lengthy opinions of the common law often seem long-winded and opaque. In most countries of the civil law, dissent in appellate courts is forbidden. The theory that the law is clear and can yield only one answer is a notion that has long since been abandoned by common law judges.

In the common law world, corruption of the senior judiciary is still terribly shocking. Happily corruption is rare, perhaps a reflection of the background in private practice of most common law judges. Moreover, military courts and military

police are not a feature of common law systems. Ever since Oliver Cromwell, the tradition of the common law has been to superimpose the civilian power over the military, even for the most part in time of war.

Against these institutional differences, the potential of a useful dialogue in Brasilia seemed, at first, remote. It is why many of us, on both sides of the divide, doubtless came with apprehensions and certain reservations about the utility of this encounter.

In describing the common law institutions as I have, I would not wish to suggest that they are faultless. On the contrary, anyone who has spent time in the common law system knows only too well its weaknesses.

Above all, the adversary trial system of the common law is extremely expensive when compared to the inquisitorial traditions of the civil law. When the President of the Constitutional Court of Germany visited Australia, he praised our legal system. He said that it was a Rolls Royce system of law. He admitted that the German system, being of the civil law kind, was merely a Volkswagen system of law. But he asked tellingly - how many citizens can afford a Rolls Royce and how many can afford a Volkswagen? This is a fundamental question that the common law tradition, with its labour intensive advocacy, must always face.

The common law has also often been unfriendly to non-commercial interests. Its rules on standing to initiate proceedings in court have been more restrictive then has typically been the case in the civil law. Although these rules have, in recent years, been revised and expanded[2], access to the courts remains a serious impediment to securing justice in the common law world. It has taken major steps by the Supreme Courts of the newly independent nations of the Commonwealth to

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2 See eg *Australian Conservation Foundation Inc v The Commonwealth* (1980) 146 CLR 493; *Onus v Alcoa of Australia Limited* (1981) 149 CLR 27.

expand notions of standing and thereby to assure greater access to law and justice in the courts[3].

Often, common law principles inherited from earlier times, have been unfriendly to minority groups as well as to women, indigenous peoples and the poor. Yet in recent decades, the courts have proved themselves careful to protect vulnerable litigants. Thus, in Australia, a decision of my Court in 1951 upheld the civil rights of communists in their challenge to a law that sought to impose civil restrictions on their rights[4]. Similarly, in more recent years, my Court has been protective of the rights of indigenous peoples in ways that would not have been dreamed off in earlier decades[5] and prisoners and accused persons have seen enlargement of their civil rights as the law has become more attentive to such issues[6].

A major weakness of the common law tradition has concerned the protection of economic, social and cultural rights. When in 1990s I served as Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia, I discovered that for many people, human rights refers not to entitlements to vote, or to protection from prosecution but to access to land, water, education and health services. In recent decades, led by the great constitutional courts of India and South Africa, expanding notions of legal protection of economic, social and cultural rights have been accepted. In this respect, the common law tradition is learning from the new nations. Sometimes the old ways die hard. I have no doubt that dialogue with legal colleagues in South America would open our eyes to the ways in which courts can facilitate access to basic human rights in all of their diversity.

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3 *S P Gupta v Union of India* (1981) Supp SCC 87; AIR 1982 SC 149; cf V N Schukla's *Constitution of India* (9th ed, 1996), 288ff.

4 *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1 at 193.

5 *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

6 *Dietrich v The Queen* (1992) 177 CLR 292 over-ruling *McInnis v The Queen* (1979) 143 CLR 575.

THE GLOBAL DYNAMICS

So what has changed that has rendered this unique encounter of legal traditions so useful and instructive for us all? Why is it that we can now say that South America is no longer, for us, terra incognita? What is the new dynamic that has opened our eyes to things we hold in common?

That dynamic is the growing globalisation of trade, culture and ideas. It is propelled by the very technology that brought us together from the four corners of the world to this remarkable new federal city in the middle of Brazil.

It is impossible to conceive of international and regional trade without increasing links of a legal character. Contracts must be made and rendered enforceable. Trade must be facilitated by counterpart laws enacted in different languages by lawmakers of different traditions. International agencies such as UNCITRAL must offer common principles that bridge the gulf between different legal traditions. It has to be so for the dynamic of global trade is so powerful and it insists upon common solutions to like problems.

As powerful as the forces of trade have been, one must now add the global force of human rights. The idea that persons have fundamental rights that inhere in them as human beings is one which has generally been more accepted in the civil law tradition than in that of the common law. Although in England the *Magna Carta* of 1215 and the Bill of Rights of 1688 were early examples of statements of fundamental rights, it was really the *Declaration of the Rights of Man and of the Citizen* that accompanied the French Revolution that initiated the notion of fundamental rights in the modern age. It was quickly followed in the *Bill of Rights* that was added to the newly minted Constitution of the United States of America. The power of these two notions has gathered pace in recent years. Now, it has invaded the heartland of the common law. The independence constitutions of the countries of the Commonwealth of Nations invariably included a Bill of Rights. In more recent years such a Charter was added to the Canadian Constitution and to the new Democratic Constitution of South Africa. Most recently, New Zealand and the

United Kingdom have adopted statutory Bills of Rights reflecting international and regional statements of fundamental rights. So far, Australia has held out from this dynamic. But even in my country things have begun to change. Two jurisdictions (the State of Victoria[7] and the Australian Capital Territory[8]) have enacted human rights laws.

Because such laws seek to express basic rights that are truly fundamental and universal, it is common to find similarities of expression across quite divergent legal traditions. So it is that today great courts, like the Supreme Court of the United States, can look to elaborations of such fundamental rights in the courts of other lands for guidance and assistance as they solve their national problems[9]. This is a new development and not without controversy. But it is one as inevitable as the expansion of the universal notion of fundamental human rights.

Even before the enactment of laws on this subject in Australia, the nation had joined the international system by ratifying the *International Covenant on Civil and Political Rights* and the First Optional Protocol to that Covenant which permits individuals to communicate complaints to the Human Rights Committee in Geneva of non-conformity of local laws with the accepted international standards. It was this development that provided the key that unlocked the legal impediments to the recognition in Australia of the indigenous peoples' claim to title to their traditional lands. In the *Mabo* case, in 1992, my Court held that the refusal of the common law to recognise native title was based on ideas of racial discrimination that were forbidden by international human rights standards. Those standards informed the content of the modern common law of Australia. They required a re-expression of that law to reverse the previous statements of the law and to accept an entitlement to

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7 *Charter of Human Rights and Responsibilities Act* 2006 (Vic).

8 *Human Rights Act* 2000 (ACT).

9 See *Atkins v Virginia* 536 US 304 at 316 n 21 (2002); *Lawrence v Texas* 539 US 558 at 576-577 (2003); *Grutter v Bollinger* 539 US 306 at 344 (2003). It may not be coincidental that the enlargement of the citation of foreign legal decisions by the Supreme Court of the United States of America has coincided with the greater involvement of the Justices of that Court in international conferences of the present type. See "Justices Around the World" in *Washington Post*, September 5, 2006 A17.

indigenous land rights[10]. That decision illustrates the way that the global and regional principles of human rights, even in common law countries, are coming to influence the reasoning of the courts and the content of the law.

In addition to such dynamic forces, we must now also face the global problems that bind us together as a species. Those problems cannot be solved solely within any jurisdiction, however great it may be. Thus, the issues of HIV/AIDS, in which Brazil has taken such a leading role, oblige us to seek out common solutions. Similarly, the issues of biotechnology now require common approaches at least to the broad principles that guide nation states in responding to new discoveries of science and technology[11]. Terrorism is another development that cannot be fought with armies using conventional means. It requires the sharing of intelligence, the use of high technology and a global response that addresses the causes and not just the manifestations of terrorist acts.

In the face of these global and regional developments, it is therefore not so surprising that people raised in quite different legal traditions should, at last, be seeking to explore shared ideas and common solutions to mutual problems. It was in the hope of furthering that search that we have come together in Brasilia.

A MODEST ANALYSIS

Against this background, let me examine, as a judge should do, the parameters of the task that has been assigned to me in this closing session. It is not an unconfined task. It is one that is defined by the language in which it is expressed.

I am asked, on your behalf, to examine issues of the judicial protection of human rights. Of course, lawyers and judges recognise that the judicial function in the protection of human rights is not the only one. It may not even be the most important one. Other agencies of society have vital functions to perform in the

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10 *Mabo* (1992) 175 CLR 1 at 42 per Brennan J.

protection of human rights. The legislature has the duty to express the law on behalf of the people who elect their representatives to do that. Without substantive law, the judges will often be bereft of remedies. They look to the legislature to state the law relevant to human rights, to elaborate constitutional provisions and to lay down ways in which they will be complied with.

The police and other officials of the State have important functions to perform. Judges work in courts and are confined to the cases that are brought to them. Most issues of human rights never come before a court. Most must be solved at the grass roots level. If police and prosecutors abuse human rights, the poor and the vulnerable may never have an opportunity to complain to a judge. Therefore, the true protection of human rights will commonly depend upon the integrity and compliance of officials, high and low, whose activities never come under judicial scrutiny.

Human rights organisations and civil society bodies have a vital function to advance and protect human rights. Scholars and activists play an important role. We judges should not deceive ourselves into believing that ours is the only, or even the most important, function. But sometimes, at critical moments, it is our duty to declare, protect and uphold human rights. In these remarks, I am addressing those moments. They are often fraught with great emotion. Commonly, they involve clashes between the powerful and the weak where the judiciary are invoked by the latter and must consider whether they are authorised to provide redress.

The topic of this session is also concerned with the judicial role. As such, it is not concerned with the formal powers of judges. It is concerned with how the judges utilise such powers as they have and whether sometimes those powers should be enhanced.

Nor is our concern with the general functions of the judiciary. These are large and wide. Many things that judges do have no relation at all to human rights. Interpreting the technical provisions of an income tax statute or a law on the limitation

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11 See eg UNESCO, *Universal Declaration on the Human Genome and Human Rights* (1997) and

of actions ordinarily have little to do with basic rights. Judges must simply perform those functions according to the letter and the spirit of the law. Yet, in some cases, indeed an ever-increasing number, issues of human rights can arise. It is at such moments that the judiciary has a special function. It is one in which the courts may be the only institution in society with the will and the power to protect the weak, the unpopular and the vulnerable.

In approaching the task assigned by this closing session, there are three further points to be made.

The first it that we are lawyers here. We are not magicians. Our duty, if we are respectful of the rule of law, is to conform to all laws that are validly made. Judges have neither the authority nor the power to wave a magic wand and to cure all injustices in society. They cannot provide legal remedies on a judicial whim. That would be a form of lawlessness and a type of judicial tyranny. In defending human rights, judges have discretions and powers. But these are not unlimited. Yet they may be large for the formulae in which such powers are expressed are often general and ample. Nevertheless, it is essential to remind ourselves that they are not wholly open-ended. The rule of law requires that human rights be protected in accordance with law and not simply idiosyncratic judicial whim.

There is a second point. It is that judges are, and must be, independent. This means that judges will exercise their powers by reference to their own understandings of the law and individual conscience. Sometimes on such matters judges will disagree. The rulings of a court will be fixed by the majority of the judges participating. Even when we disagree, it is important to respect the rights of judges to reach conclusions that may seem to some observers insufficiently attentive to fundamental privileges and duties. We must face the fact that judicial independence includes the independent entitlement of the court to get its decisions wrong as well as right. Hopefully, appellate processes will correct the errors. But the longer we

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Universal Declaration on Bioethics and Human Rights (2005).

serve in the law, the more we understand that, in issues of human rights, there are often different solutions that will be attractive to different minds.

Thirdly, we must beware of legal imperialism. We have not come so far in the world to now give way to a new domination of any legal culture. We can learn from each other, that is true. But each culture and society has its own traditions and viewpoints. Universalism is a modern dynamic. But the variety of approaches in different nations must be understood for often such variations arise out of long traditions and unique local circumstances.

Having listed these words of admonition, I now address the ten points in an action plan that we should consider as we go from Brasilia to our own countries. It is an action plan designed to follow up the ideas that have been shared at this conference.

TEN ACTION PROPOSALS

(1) *Leadership by Supreme Court*: The first point to be made is that, in every land, the Supreme Court or its equivalent, inescapably has important leadership functions. It sets the tone and the example that will often be followed down the line of the judicial hierarchy. Even if principles of precedent are not observed as carefully as they are in common law countries, in all nations the final court must realise the importance of the decisions it makes.

I have come to this conference from an annual seminar conducted at the Yale Law School amongst judges of final courts. One of the participating judges was Jorge Corera of Chile. It is a privilege to take part in this annual seminar. It demonstrates the commonality of the issues, of human rights and otherwise, that come before final courts in many lands at about the same time.

It is unfortunate that no judge of the Supreme Federal Court of Brazil took part in this conference. In my experience, judges of final courts have things to teach, but also things to learn, from lawyers at other levels of the hierarchy. In matters of human rights protection, it is essential that judges of the final courts,

with their particular responsibilities, should be aware of the daily developments for the protection of human rights arising in courts lower in the hierarchy.

(2) *Defence by Minister*: Not only must the judiciary be defended by the final court, in faithfully discharging its functions in the protection of human rights. It should also be defended by the Executive Government which has the power of the purse and access to the media in ways that the judiciary does not. As Lady Justice Hallett observed in opening this conference, attacks on the judiciary, by powerful individuals and forces and by the media, have become much more common throughout the world than was formerly the case. Within the legislature and the Executive, those who operate there should observe rules of mutual respect. There is a need for restraint in attacks on judges for judges are never in an equal position to respond. If they attempt to do so, they descend into the world of politics, power and entertainment which is not their proper role.

In earlier times, it was usual in common law countries for the Attorney-General or Minister of Justice to defend the judiciary. There is a need to uphold this tradition in all lands, so that judges have valiant champions who will speak for them when they are wrongly attacked. This is not to prevent proper criticism of courts, properly expressed. But it is to explain the difficulties that judges face in defending their own institution.

(3) *Judicial attitudes*: It is also important for the judiciary to earn respect for their role in upholding human rights. They must do this by performing their functions in a way that is ever-respectful of the human rights of those before them.

At a conference in Quebec City, many years ago, Justice Louise Arbour, now the High Commissioner for Human Rights whose message was read at the beginning of this conference, taught me an important lesson. She observed that she would never accept the diminution of human rights from a witness or litigant. Nor would she accept it from an advocate in her court. Nor would she

accept it from a colleague in the court. I remembered these words on my return to Australia.

One of my judicial colleagues then was given to making inappropriate jests at the expense of women and minorities. When next he attempted such a remark, remembering Justice Arbour's injunction, I observed that he neither spoke for me nor for the Court. Soon his jests were a thing of the past, at least in court. By their lives and professional work, judges must exhibit an attitude respectful of human rights and thereby earn the acceptance of their role as defenders of such rights.

(4) *Transparent reasoning*: The modern age encourages accountability and the demonstrated rationality of decisions impinging on the rights of citizens and others. This is why, in the common law tradition, judicial reasons are more discursive and detailed. Judges sincerely endeavour to explain all of the steps that lead to their conclusions. A mere formal recitation of the facts and pronouncement of the conclusion will not usually be convincing for the educated litigant and citizen of today. This is doubtless the reason why, in Article 93.9 of the Constitution of the Federative Republic of Brazil (1988) it is provided:

> "All judgments of the bodies of the Judicial Power shall be public, and all decisions shall be justified, under penalty of nullity ...".

It would be a good thing if there were similar provisions in the law of all countries so as to oblige judges to explain in every case the real reasons for their decision. Reasoned justice is a great reinforcement of the judicial role. In deciding matters of human rights, courts are teachers and educators for their societies. Dogmatic assertions of the law will not carry the conviction and persuasive force of truly reasoned opinion that explain the outcome to the litigants and the citizens.

(5) *Shared experience*: It is often useful for judges to share their experience and to look to how colleagues in the judiciary, including in other lands, have solved common problems. Within the Commonwealth of Nations, there are many judicial colloquia where judges come together to explore such issues. If there is another inter-regional conference of this kind, it would be desirable that a representative of the Commonwealth Secretariat be invited to attend. In my view it would be desirable, as appropriate, for judges from South America to be invited to take part as observers in suitable Commonwealth judicial meetings. This is not to impose common law techniques or judicial decisions upon unwilling recipients. But every judge knows that, when faced with a problem, subject to disparities of law, it is often useful to see the way that clever colleagues in other lands have explored and solved the problem. Shared experience of this kind gives strength to judges in upholding fundamental rights. It reaffirms their intuition and reinforces their resolve.

(6) *Judicial training*: When I was first appointed a judge, in 1974, there was no judicial training in Australia. Most Australian judges shared the view then expressed by Lord Devlin that judicial training might become a means of propaganda by the Executive, intrusive into the independence of judges[12]. That attitude has now changed. Since then, throughout the common law world, judicial training has been introduced. Generally it is under the control or supervision of the judges themselves. But it opens the minds of judges to new thoughts and new experiences. Particularly, it helps them to understand perspectives of the law, and experience, of minorities.

In Australia, judicial training includes the provision of information on the perspectives of women and children concerning the law. It permits judges to meet representatives of indigenous people. In my own case, as a homosexual judge, I feel it is useful to share that perspective with judicial colleagues. Often they may feel that they have not met homosexuals. Seeing the way the law operates through the eyes of others is an important ingredient in a judiciary

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12 P Devlin, *The Judge*, OUP 1979, 36, 47.

that is sensitive to aspects of human rights. The protection of human rights is not a mechanical task. It is one that requires open-mindedness and a willingness to think outside the square.

(7) *Strengthening the advocates*: Judges in every tradition are highly dependent on advocates. It is they who often choose the cases to be brought to court. It is they who often frame the arguments that will be presented for the court's determination. The legal profession play a vital role in the defence of human rights and in vigilantly upholding basic rights before independent, impartial and competent tribunals. In Brazil the profession of advocates has been forthright in the defence of these fundamental features of the judicial power. Also in the Constitution of Brazil, Article 133 provides:

> "The lawyer is indispensable to the administration of justice and is inviolable for his acts or manifestations in the exercise of his profession, within the limits of the law".

The judicial role in the defence of human rights is highly dependent upon skilled and independent advocates. The courts should therefore uphold those features of the legal profession and defend them whenever they are under attack.

(8) *Civil society organisations*: Almost as important as the legal profession in the defence of human rights is the role of civil society organisations. Often they are critical to the empowerment of the weak, the poor, the unpopular and the vulnerable. Hostility towards such organisations within the judiciary should be a thing of the past. The judicial role is enhanced when such bodies speak up for the otherwise voiceless. Judges should consider associating themselves with appropriate non-governmental organisations. Thus the International Commission of Jurists, of which I was once President, is an important body of judges, lawyers and legal academics for the defence of human rights and the rule of law. A culture of human rights can be furthered within the judiciary, the legal profession and society by appropriate organisations of this kind. Quite

frequently they are essential to the proper operation of national and regional courts established for the defence of human rights.

(9) *Broadening concepts*: One chief value of collaboration in inter-regional conferences of this kind lies in the lessons that can be learned about perspectives of human rights. In this meeting we have examined different notions of the law of standing and different concepts of human rights, including economic, social and cultural rights. It is in these areas especially that developed countries have much to learn from new or developing countries and their judiciaries. The leadership role of the Supreme Court of India and the Constitutional Court of South Africa should be specially mentioned in this respect. By exchanging experiences we can, within our own differing legal provisions, learn to adapt old ways and to address the really urgent and important priorities for human rights in the courts in the 21st century.

(10) *Judicial integrity*: Finally, as already mentioned, judges must earn respect for their role in defending human rights by the integrity with which they discharge their functions. Recently I have been Rapporteur of an international group which has developed universal principles of judicial integrity. By dialogue between senior judges of the common law tradition and judges of the civil law tradition, basic principles have been agreed[13]. Under the auspices of the United Nations Office on Drugs and Crime, Global Programme Against Corruption, Judicial Integrity Group, the principles have been submitted to, and endorsed in principle by ECOSOC within the United Nations[14]. This is the type of activity in which judges of different traditions and regions can come together to express common principles. The greater the integrity of the judiciary, the more likely will be the success of its role in defending and upholding the human rights of those who come before the courts.

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13 M D Kirby, "Judicial Integrity: A global Social Contract" (2003) 29 *Commonwealth Law Bulletin* 976. The original principles are published (2001) 27 *Commonwealth Law Bulletin* 404 at 408.

14 ECOSOC Resolution 2006/23.

Integrity now requires of judges a leadership role in law reform; in education of the media; in civic education and in explanation of the universal and regional principles of human rights. The judiciary of every nation is no longer a cloistered group. In the age of the internet and international dialogue, the judiciary must accept obligations that predecessors did not have to shoulder. The quiet integrity of the individual judge must be preserved. But in today's world, the judiciary must also play the part of civic educator. We must learn to communicate better than we have to the citizens and others whose rights and duties we enforce. We will do these tasks better as we appreciate the similarities of the challenges facing colleagues in every land and, where appropriate, we can learn from the ways in which others respond to those problems.

NO STRINGS ATTACHED

The logo of this inter-regional conference displays a human being with a complex network of lines signifying heart and mind. The logo was apt for our deliberations. The mind is displayed as full of complex interactions. The heart is clear and simple. The judicial role in the defence of human rights invokes both heart and mind. Neither without the other would be effective or a proper example of the judicial art.

Significantly, the lines of inter-connection leave the human object and are stretched for a great distance, just as the universal principles of human rights now expand their influence to all parts of the world. But significantly, the line ultimately comes to a conclusion. It is not connected to any external force. I consider that to be a good symbol for this conference.

In the past history of South America, many have come from across the seas bearing gifts. But usually those gifts have come with strings attached. In the present instance there have been no strings attached to this encounter. We have met, explored issues and exchanged information with mutual respect and shared willingness to learn from each other. This is how it must be in the modern age. I pay

tribute to all of the sponsors of this conference for adopting the principle: No strings attached. This is the only principle that will work, or should work, in a symposium of this kind.

We will go from Brasilia with new friendships and many new ideas. We recognise the great challenges to the protection of human rights in this continent as in every other. We hope that by our dialogue, and by the links that have been established, we can continue to share knowledge and experience for the welfare of the people whom we serve. Talk comes easily to judges and lawyers. Of itself, talk it is not enough. But it can be a stimulus to action and an encouragement when that is needed. From the judges and lawyers of my tradition, I bring greetings and respects to the judges, lawyers and citizens of the great continent of South America - no longer terra incognita.

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