Living Memory of the Inter-American System of Human Rights

Oliver Jackman*

* Juez, Corte Interamericana de Derechos Humanos.

Summary: I. Introduction. II. Involvement with Human Rights Matters. III. Relationship of Journalism and Diplomacy to Judge Jackman's Work in Human Rights. IV. A Judge from the Caribbean. V. The Caribbean Court of Justice.

LIVING MEMORY OF THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

OLIVER JACKMAN

I. Introduction

Oliver Jackman, a native of the former British colony of Barbados, has been a Judge of the Inter-American Court of Human Rights since 1995, having been elected at the XXIV General Assembly of the Organization of American States, and re-elected in 2001.

He is the second person from the English-speaking Caribbean to sit on the Court, the late Judge Huntley Monroe of Jamaica, who sat on the first Court from 1979 to 1985, being the first. Having been a member of the Inter-American Commission of Human Rights from 1986 to 1994 (President 1989-90), Judge Jackman has the distinction of being the only person to date to have served on both human rights organs of the OAS.

In this interview with staff of the Court´s Secretariat Judge Jackman offers some personal reflections on his experience in the Inter-American Human Rights system.

II. Involvement with Human Rights Matters

Like so many things in life, my involvement with human rights matters began almost accidentally, in that my first contact with the Inter-American Human Rights system came about as a result of my posting as Barbados Ambassador both to the United States and to the Organization of American States (OAS).

This was at the end of the decade of the 1970's, at a time when dictatorships in South America were at their repressive worst. The importance of the work of the Inter-American Commission on Human Rights (the Commission) during this time, under the courageous and enlightened leadership of that distinguished Venezuelan diplomat Andres Aguilar, cannot be over-stated[1].

1 Editor's Note (E.N.). Andrés Aguilar was elected Chairman of the Inter-American Commission of Human Rights in 1974.

As a lawyer and diplomat from a West Indian country where the traditions and culture of the Common Law are deeply entrenched, it was almost automatic that I should empathise with the work of the Commission in the protection of the human person and in support of the rule of law. Consequently, with the full backing of my government, I participated actively in the debates and decisions of the Permanent Council and the OAS General Assembly in support of the Commission's views and recommendations.

Other delegations from the English-speaking Caribbean, sharing the same cultural and legal traditions, were also active in the defence of human rights in the hemisphere, none more so than the Jamaican delegation, headed by Ambassador Fred Rattray.

This had some interesting repercussions. In 1978, the Venezuelan Government honoured Ambassador Rattray and myself with membership of the Order of Francisco de Miranda[2] for our activities in the cause of human rights.

On the other side of the ledger, I attracted the attention of a certain military government in South America, representatives of which informed me that, as a result of my statements and actions, that state was cancelling its plans to establish a resident embassy in Barbados. I reported this development to Sir Henry Forde, then Minister of External Affairs. He instructed me to convey to the representatives of that government certain explicit suggestions for an alternative location for their embassy. As these suggestions were neither practical nor printable, I decided to disobey his orders. (As a footnote, after he retired from his ministerial post, Sir Henry was elected and served with distinction as a member of the Commission until he was forced to resign for personal reasons before the end of his four-year term).

In 1985 the Heads of Government of the Caribbean Community (Caricom), taking note that no Caricom citizen had ever been a member of the Inter-American Commission on Human Rights, and bearing in mind my legal and diplomatic background, nominated me for one of the vacancies, to which I was duly elected at the OAS General Assembly held in Cartagena and served two terms as a Commissioner. On my election to the Court in 1994, I had the honour to be the first person to serve in both organs of the Convention.

2 E.N. The Order Francisco de Miranda, created in 1943, is meant to award Venezuelans and foreigners who have been recognised for services rendered to science and to the country's progress, and who showed outstanding merits.

III. Relationship of Journalism and Diplomacy to Judge Jackman's Work in Human Rights

Journalism, law, and diplomacy call for a degree of skill in the use of language. I studied law at university, and had my first jobs in radio and newspapers in England and Nigeria. Later, I worked in the information services, successively, of the government of Barbados, the government of the West Indies Federation, and the United Nations, before being engaged in the diplomatic service of Barbados.

While the work of the Inter-American Commission obviously involves elements of law, its role in the promotion of human rights and in conciliatory initiatives such as friendly settlements calls for constant communication with member-states and with the wider public, as well as a considerable amount of quiet -and sometimes not so quiet- diplomacy. In this context I found my previous professional experience of great relevance.

As a tribunal whose rulings are binding on States that have accepted its jurisdiction, the Court is not required to involve itself in the standard activities associated with formal diplomacy. At the same time, in carrying out its mandate, it is obvious that clarity of language, both in its formal judgments and in its day-to-day communications with States, is a *sine qua non* of its work. Here, too, I have found that my earlier occupations have provided me with helpful and pertinent working tools.

IV. A Judge from the Caribbean

Judges, of course, do not "represent" countries or geographical regions, being "elected in an individual capacity" *(Article 52 of the American Convention on Human Rights)*. While it is, generally speaking, desirable that there be a degree of geographical diversity in the personnel serving an international organization like the OAS, I think that the drafters of the Convention were absolutely right to stress the personal aspect in setting out the criteria for membership of the Court.

That said, it is a reality that in the Americas there are at least three distinct systems of law, the so-called "civil" system found in the Ibero-American States, the Roman-Dutch system of Suriname (and to some extent Guyana), and the Common Law system in Canada, the United States, and the Commonwealth Caribbean.

But it is also a reality that the Convention, like all international instruments, was developed and drafted by persons from different systems of law. While the influence of Latin America was perhaps preponderant in that process, diplomats

and lawyers from the Common Law system were present at the creation, and, as the *travaux preparatoires* clearly show, played their full part in the shaping of the treaty.

It must be borne in mind that the Court's jurisdiction is clearly defined in the Convention, and comprises:

a) "all cases concerning the interpretation and application of the provisions of the Convention" *(Article 62.3)*;

b) its consultative functions in regard to "other treaties concerning the protection of human rights in the American States"*(Article 64.1)*; and

c) the power "at the request of a member state of the Organisation" to emit "opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments"*(Article 64.2)*.

Within the strict compass of this jurisdiction it is, at least, debatable whether, if at all, the difference of systems (as such) can have an identifiable impact on the approach taken by individual judges in coming to their conclusions. There are, however, certain nuances that I have found to be constant in the years I have worked in the Inter-American system, and my conviction is that these have more to do with language, on the one hand, and what I might call the juridical culture, on the other.

As far as the language question is concerned, some linguists have advanced the view that English is a shorter, more practical, more specific, and less rhetorical language than Spanish; there are those who would suggest, for example, that a given text in Spanish is necessarily some 25 per cent longer than its English equivalent.

Whether this is objectively the case or not, I certainly have felt over the years that my own mode of expression is, compared to that of my Spanish-speaking and Portuguese-speaking colleagues, somewhat on the laconic side.

The question of juridical culture is more complex and, to my mind, not totally separable from the language question. It is my impression that, in general, the Common Law juridical culture tends towards the pragmatic; that is to say, the emphasis is on the need to search for the answer to the instant juridical problem and the general tendency is to try to circumscribe the solution to the context and circumstances of the instant case, bearing in mind, of course, the statutory and precedent-based guidelines that are strictly relevant to that solution.

It seems to me, on the other hand, that members of the civil law fraternity with whom I have had dealings are more ready than common lawyers to extrapolate *ex cathedra*, as it were, and somewhat more anxious to construct relatively substantial edifices of general law from particular cases.

V. The Caribbean Court of Justice

The Caribbean Court of Justice was recently inaugurated at its headquarters in Port of Spain, Trinidad, under anything but favourable circumstances. Its mandate is two-fold: on the one hand it has original jurisdiction in all conflicts arising in connection with the *Treaty of Chaguaramas*, the founding document of the Caribbean Community (Caricom): on the other, it is intended to be the final Court of appeal for those Commonwealth Caribbean countries that decide to accept it as such, in replacement of the Privy Council.

The Court is comprised of nine judges, including one from the Dutch Antilles and one from the United Kingdom, and is presided over by one of the most distinguished jurists in the region, the former Chief Justice of Trinidad and Tobago Michael de la Bastide[3].

Its original jurisdiction extends to all members of Caricom including Suriname (and, eventually, Haiti, whose membership of the Community is presently suspended).

Although now fully constituted, a shadow of ambiguity and internal political conflict broods over the Court's appellate jurisdiction. A previous government of Trinidad and Tobago headed by Basdeo Panday, now the Leader of the Opposition in Parliament, had lobbied successfully for the Court to be headquartered in Port of Spain. Appropriate buildings and other infrastructure were provided by the government, but the constitutional changes necessary to permit Trinidad and Tobago to accede to the Court's jurisdiction (and abandon that of the Privy Council) were not legislated.

When the current government sought to make the necessary changes, which require a two-thirds majority in Parliament, the former governing party now in

3 E.N. The Judges of the Caribbean Court of Justice are Mr. Justice Michael de la Bastide (Trinidad and Tobago), President, Mr. Justice Rolston Nelson (Trinidad and Tobago), Mr. Justice Duke E. E. Pollard (Guyana), Mr. Justice Adrian Saunders (St. Vincent), Mme. Justice Desiree Bernard (Guyana), Professor David Hayton (United Kingdom), and Mr. Justice Jacob Wit (Netherlands Antilles).

opposition, refused to cooperate, insisting, instead, on a comprehensive review of the Constitution. Thus, the country where the Court is sited, and of which the President is a citizen, is not yet subject to the Court's jurisdiction.

Other Commonwealth Caribbean countries -not all, alas- are expected to accept the Court's jurisdiction in due course, when necessary constitutional changes have been implemented. It should be noted that Guyana had long withdrawn from the jurisdiction of the Privy Council. In the case of Barbados, section 86(1) of the Constitution of 1966 provides for the country to accede, without constitutional formality, to any eventual tribunal of final appeal to be established jointly with other Commonwealth countries.

On the bright side, however, two countries have formally accepted the Court's double jurisdiction, namely, Guyana and Barbados. This has led to the Court's receiving and accepting its first case from Barbados, in which a major communications corporation ***Starcom Network*** sought and obtained leave to appeal a decision of the Court of Appeal in a defamation matter.

In addition, the Government of Barbados has announced its intention to appeal against the decision of the Court of Appeal in the case of ***Boyce and Joseph*** wich commuted death sentences against two convicted murderers. This case, of course, is one that has been dealt with by the Inter-American Commission on Human Rights, and on which the Inter-American Court has ordered a series of provisional measures.

It is expected that hearings in the matter will begin before the end of 2005[4].

4 E.N. The first sitting of the Caribbean Court of Justice took place on August 8 and 9, 2005, and was held to consider an application for special leave to appeal from the Court of Appeal of Barbados.