



Excerpts from a speech by Sir Shridath Ramphal on the occasion of the 50th anniversary of the Commonwealth Law conference.

■ The 21st century has not dawned well for humanity. Instead of going forward to a new era of global security that responds to law and collective will and common responsibility, we are going backwards to the spirit and methods of the sheriff's posse dressed up to masquerade as global action.

There should be no question of which way we go; but the right way requires the assertion of the values of internationalism - including very specially the primacy of the rule of law world wide - and institutional structures, like the International Criminal Court, that secure and sustain those values. Instead, these first years of this century in particular have shown, though the signs were there decades before, that the ambition for world domination, which has ever been a global curse, remains so still.

In his timely book, *Lawless World*, Prof. Philippe Sands QC, has shown just how calculated and pervasive is this retrogression. It has been written with the incisive pen of a respected international lawyer and with the authority of one who has not merely taught its principles in the classroom, but engaged and tested their practical implementation in the field. It is encouraging that it has been written by a Commonwealth lawyer.

As I read its cosuscating pages I recalled a Symposium at the Aspen Institute in the mid 90's when Sir Brian Urquhart and I found ourselves confronted by what we now know as the rising vulcans. Brian Urquhart is an internationalist of Dag Hammarskjöld's UN and, as you would expect, our plea was for a world order under law. Their response was in effect this: You must accept that America will not be constrained by any power, any law, any institution, any doctrine of internationalism in pursuing its national interests as it perceives them; but the world should not worry about this for we are the good guys and our cause will be ever virtuous. It was for me a terrifying moment; that moment of full awareness of how close we were to a lawless world. Although we did not know it, the Project for the New American Century was close at hand.

As I have said, all of this did not happen overnight. September 11, 2001 was not the fons et origo of present dangers. The decision, as we now know, to effect regime change in Iraq was taken within the first months of the Bush administration. International terrorism in any form is a grotesque abomination; and '9/11' was an enormously criminal act of terrorism. It was also enormously stupid - even by the distorted standards of those who perpetrated it. What it did was to provide a timely opportunity for a new imperium to emerge with plumes of virtue and trumpets of righteousness. It offered opportunities otherwise only dreamed of by the globally regressive forces of the right. It gave plausible validation to an assault on the rule of law internationally. And that assault has come.

The Kyoto Protocol, so vital to human survival, implies change for America; and

so despite the modesty of its gains, it had to go - at least so far as the world's principal polluter was concerned. The International Criminal Court could call Americans to book for crimes against humanity, so America must be placed above the law - and beyond the reach not only of the Court but also of such legal symbols of our maturing civilisation as the 'Anti-Ballistic

Missile Treaty, the Biological and Toxic Weapons Convention, the UN Agreement to Curb the International Flow of Illicit Small Arms, the Land Mine Treaty, the International Plan for Cleaner Energy and, epitomising this turning aside from shared human effort for survival, the Comprehensive (Nuclear) Test Ban Treaty. And these are only the formal derogations.

It is easier of course, to attack the rule of law world wide than to tilt against it on the domestic front. But when you succeed in reversing global trends toward the rule of law internationally, it becomes somewhat easier to trifle with its traditions at home. There are resonances here of the dangers all countries will face particularly, but not exclusively, in our responses to international terrorism.

Now with terrorism on the doorstep here in Britain principles of liberty and justice as Commonwealth countries have known and valued them will become endangered. In some respects they have already. Yet, those traditions of freedom under law of which Sir Hartley spoke 50 years ago must not be offered up as sacrifices to terrorism. Were they to be, the terrorists would have wounded the whole society. And not only here in Britain. I want to emphasise that larger danger in this Commonwealth gathering.

The traditions of freedom under law are now values to which all Commonwealth countries aspire and by which most live; and in many respects Britain sets the benchmark of these aspirations. Particularly in newer, smaller, Commonwealth countries where the roots of democratic governance and the rule of law are not as sturdy as they are elsewhere, and some in which they are still tender shoots, what happens here in Britain is directly relevant to their society. The Commonwealth legal culture of which I spoke earlier makes the integrity of freedom under law anywhere in the Commonwealth the entire Commonwealth's business - as much as apartheid in the old South Africa, or UDI in Rhodesia or the quality of governance in Zimbabwe or Pakistan. The tributaries of Runnymede run far and wide and deep. Pollution at source does incalculable harm far beyond its familiar banks.

And let it not be thought that the challenges to freedom under law derive only from the response to 'terrorism'; there are countless Commonwealth jurisdictions which face not wholly dissimilar challenges to national security, national stability, sometimes even national survival. They may not wear the label of 'terrorism'; but the per-

ception of endangerment is often as acute, and the instinct to respond with ferocity is always as tempting. In these times, political judgement can be easily blurred, sometimes the judgement of whole societies.

And of course all these dangers are enlarged when freedom under law is overthrown in the wider society of nations - when the environment in which the political decisions to be taken at home is the environment of a lawless world - particularly one made lawless by conviction, not on the periphery, but at the centre of power.

In such an environment there is temptation for the unimaginable to be made excusable and then become, all too quickly, fashionable. Nowhere in the Commonwealth, nor anywhere beyond it, do we need, for example, precedents for political dictation to the judiciary or threats to the authority or independence of judges; and yet such precedents loom - from the likeliest of quarters, but in even the unlikely of places. Today, everywhere in the Commonwealth, there is need for solidarity on the independence of judiciaries - from Britain to Zimbabwe. There is nothing which ever changes the truth that the price of freedom is eternal vigilance.

At such times, the legal profession, every branch of it, has a particularly critical role and responsibility. We are all part of our societies too, and therefore infused with societal instincts; but we also have a duty to society which demands from us a more disciplined, more professional, more balanced approach - an approach enlightened by conviction in the ultimate strength of those values of freedom under law. It will often be an unpopular approach requiring courage in advancing; but it was to this, I believe, that the Prime Minister was referring that night in the Guildhall 50 years ago when he said:

We must not take too much for granted. What our ancestors won by effort can only be kept by vigilance. We are, all of us, all of us, (the emphasis his) our respective parts to play. That is true in our economic and political life. I think it is equally true in law...it is because the millions of people in all our countries believe that by and large the law upholds fair dealing and equity, it is because they believe that those who practise and are learned in the law approach it in that spirit, that there is respect for you and for the law. It is this respect which inspires the Commonwealth to go forward as a strong and steady force in world affairs.

How then do we answer the question Can the Rule of Law in the Commonwealth be Secure in a Lawless World. The answer surely must be: No, it cannot be secure - unless the premises change. That means first of all that the world must not descend into lawlessness. Commonwealth lawyers alone cannot ensure this; but a solid phalanx of Commonwealth legal opinion can be an important force standing against that

descent. The filing of an amicus brief by the Commonwealth Lawyers Association in the first cases before the United States Supreme Court relating to the Bush Administration's policies in the 'War on Terror' (the Rasul and Hamdi cases), is proof enough that you recognise the relevance of this role and the necessity to play it. Those associated with this effort (and I think particularly of Sir Sydney Kentridge QC, Colin Nicholls QC and Tim [unclear]) have rendered a great service to the rule of law worldwide - an example of that service to the nations of the world for which the Prime Minister looked to Commonwealth lawyers with such confidence 50 years ago.

And it is not only the filing of the brief that we should honour, but also its use in the judgements of the Court. As you know, by a majority of 5 to 4, the Supreme Court rejected the Administration's arguments and held that the United States courts do have jurisdiction to consider challenges to the legality of detention by all of the foreign nationals held at Guantanamo Bay. In delivering the opinion of the Court allowing habeas corpus to run to Guantanamo Bay Justice Stevens drew upon the case law addressed in the CLA brief in tracing the history of the writ back to Magna Carta and referring to English authorities going back over four centuries...

Lawyers, Commonwealth lawyers among them, are now engaged in what could be a protracted struggle to secure the fundamentals of freedom under law. In that same cluster of 'enemy combatant' cases Justice Stevens used words which might stand for all countries. It was a dissenting judgement in the Padilla case which itself went against the Government. The 'dissenters' simply wanted the Court to go further. This is what he counselled: If this nation is to remain true to the ideals symbolised by its flag, it must not wield the tools of tyrants even to resist an assault by the forces of tyranny.

It is counsel that Commonwealth lawyers in their several jurisdictions might make their own. In doing so we would do well to remember those words from Sir Hartley's toast to Freedom Under Law with which I began:

So just as, in the seventeenth century particularly, lawyers protected liberty against the encroachments of the executive, so perhaps, today, in quite different circumstances, lawyers may be able to help, not certainly in frustrating the activities of the State decided upon by Parliament, but in assisting the State to conduct those activities without impinging upon individual freedom and justice.

The circumstances today are even more different; but the duty to assist the State to conduct (its) activities without impinging on individual freedom and justice could be even more pressing. ■

# Commonwealth must stand against lawless world