COMMONWEALTH LECTURES

Edited by
Peter Jones

Lectures delivered in
The University of Edinburgh

in association with the
Commonwealth Heads of Government Meeting 1997

The Institute for Advanced Studies in the Humanities,
The University of Edinburgh

December 1997

The Institute for Advanced Studies in the Humanities, in The University of Edinburgh, is the only one of its kind in the United Kingdom, and since its foundation in 1970 has welcomed over 500 International scholars as Fellows, from 45 countries, to pursue advanced studies in the *Humanities* - understood as the study of all matters concerning the human condition and culture which do not require laboratory work.

The public dimensions of the Institute's work take the form of seminars, lectures, cultural events and publications.

The Institute acts as an intellectual and social catalyst, selecting themes which bring together people from different walks of life to address common problems, and to pool resources: those from the educational profession work alongside those from industry, commerce, government and the media. Traditional scholarship is augmented by innovative work of an inter-disciplinary nature.

Major themes have been: **The Scottish Enlightenment** (1986); **Technology, Communication and the Humanities** (1988); **1789-1989: Evolution or Revolution?** (1989); **Cultures and Institutions** (1991); **Costing Values** (1993-99); **European Enlightenment** (1995-2000); and **Scots at War**.

Three international exhibitions have been devised and mounted at the Royal Museum of Scotland during the Edinburgh International Festivals, and have attracted attendances of up to 100,000.

Sponsorship and generous benefactions make the work of the Institute possible, and the Director welcomes the opportunity to discuss such matters in confidence.

The publications associated with the Institute reflect the personal interpretations and views of the named authors; neither The Institute for Advanced Studies, nor The University of Edinburgh is responsible for the views expressed.

For further details of the Institute, please write to:

Professor Peter Jones, FRSE, FRSA, FSA Scot,
Director, The Institute for Advanced Studies in the Humanities,
The University of Edinburgh,
Hope Park Square,
Edinburgh EH8 9NW, Scotland

COMMONWEALTH LECTURES

Delivered in association with the
Commonwealth Heads of Government Meeting 1997

Edited by
Peter Jones

Institute Occasional Papers 9

The Institute for Advanced Studies in the Humanities,
The University of Edinburgh

December 1997

© Copyright: The Institute for Advanced Studies in the Humanities, The University of Edinburgh

First Published 1997

ISSN 2041-8817 (Print)
ISSN 2634-7342 (Online)
ISBN 0 9514854 9 0

TABLE OF CONTENTS

Introduction

Peter Jones 1

Biographical Note of Fellows **7**

Commonwealth Strategies for Peacee

Paul Reeves 9

Genocide and Remembrance: The Moral Dilema

Richard Sezibera 22

War Crimes Trials

Ninian Stephen 38

Proportional Representation

David Lange 60

The 'Costs' of International Peacekeeping

Malcolm Rifkind 88

INTRODUCTION

PETER JONES

The following lectures by distinguished Fellows of the Institute, not only recorded the experiences of eminent men of affairs, but raised a series of fundamental questions about peace, law, governance and public understanding in the coming decades. The lectures were part of the University's programme of events arranged in association with the Commonwealth Heads of Government Meeting, held in Edinburgh in October 1997. In addition, however, they were part of the Institute's Project on *Costing Values*. That project, which began in 1993, has three goals:

1. to identify and analyse fundamental issues on which everyday decsions rest, throughout the world, but which rarely receive such attention;
2. to bring together from different walks of life the very people who make daily decisions and need to reflect on such ideas - leaders from industry, commerce, politics, the diplomatic world, as well as from specialised professions and research institutes;
3. to challenge and transcend boundaries of current thinking on perspectives from different cultures.

All participants in the seminars and conversations associated with the project consider three questions;

- what values are upheld in our particular communities?
- what resources are needed to implement them?
- what sacrifices must be made in order to pursue such priorities?

The audiences at all of the lectures responded with rapt attention, as befitted the speakers and their themes. On one occasion, however, the absolute silence in the distinguished gathering signalled an awareness and a human sympathy that should be recorded. Richard Sezibera, like Eric Lomax, who spoke a few months earlier of his experiences of a Japanese prison camp, had travelled to the Abyss, and returned. Those of us who have been privileged to live and work within the great Universities of the world in the company of such people have a duty to ensure that our fellow citizens are made aware of their sacrifices, and of their inspiration.

In the opening lecture, Sir Paul Reeves explicitly called for the revision of existing notions, and urged that the globalisation of many factors in the modem world required a new understanding of both sovereignty and of the nation-state. We must grasp what constitutions can and cannot do - a point underlined by Sir Ninian Stephen in an earlier lecture at the Institute [*Occasional Papers No 3*]. In particular, a constitution cannot itself infuse the institutions it sets up with values, nor can it encompass all the forces that determine and temper a country's development. Religious communities face particular challenges in

becoming agencies which nurture human rights, rather than the imposition of practices from different ethnic or cultural traditions.

Ethnic diversity is rarely a straight forward matter, however, as Dr Sezibera emphasised in his presentation on the moral dilemma surrounding the genocide in Rwanda. Should survivors remember in silence, or speak, and banalize the inexplicable? Can survivors assuage the guilt of survival, avoid the betrayal of the dead, or accept the concern of the previously unconcerned; can those who refused to get involved take up the cause without self-deception? The long sequence of events leading up to the killings in 1994, and the deliberate ethnicisation of Rwandan society record the worst moments of colonial power: an efficient administration and a strong power base were quite enough to ensure the removal of opponents, with even the simplest of weapons. The genocide, as at other moments in history, took place with the support of normally morally upright citizens, and the complicity of the international community. How and where should such events be remembered, and by whom? All pilgrims are tourists, in some sense, but can tourists avoid becoming *voyeurs*? The murderers are known, and have now returned to live in the same villages as the surviving relatives of their victims: the murderers were often eight or ten years of age. What constitutes justice in such a context, and how should it be enacted?

Sir Ninian Stephen describes how the United Nations tried

to address just these issues, first in connection with the atrocities committed in Bosnia, and then in Rwanda itself. The aim was to create international judicial tribunals to prosecute breaches of international humanitarian law in armed conflict. The Court of which Sir Ninian has been a member is concerned with acts of individuals, not those of nations, and he outlines the challenges faced in setting up the Court: transparency of procedure, and legal aid; prosecution, arrest and trial of those accused of crimes; *in absentia* trials; the diversity of judgment among judges from different judicial traditions on matters of fact and law; absence of a jury, and the public glare and representation of trials; the rights of witnesses and victims, in contrast to the rights of the accused and the prosecution. Sir Ninian emphasises that no initial set of rules can hope to cover all contingencies; equally, international conventions, unlike national laws, have to meet the divergent views of many governments. If a permanent international criminal court comes into existence, it will require voluntary surrender by participating nations of their exclusive criminal jurisdiction - a matter which is at the heart of sovereignty.

Sir Paul described the voting strategies proposed for Fiji, and Mr David Lange discussed the New Zealand experience of proportional representation, which was introduced into the electoral system almost by accident. Although New Zealand inherited the Westminster model of government, there is now only one house, and in recent years special provision has been made for Maori representation. A royal commission, established in 1984,

recommended that the country adopt a form of representation akin to the model used in West Germany - a mixed member proportional system [MMP]. After dramatic electoral swings, a two-stage referendum on the preferred electoral system was held in 1993, MMP won a narrow majority, and the first election under the new system took place in 1996. At that juncture, however, the existing two party structure was fragmenting, and not all contending parties were willing to declare who they were prepared to stand with. No one knew what form a coalition government might take, nor its broad direction. There is no sign of moderation in debate or Parliamentary conduct, as promised by supporters of MMP, and little evidence of consultation and co-operation. The old political culture has reasserted itself. In despair the public may well abandon MMP when it comes up for review in a few years time. Contrary to much public opinion, however, the MMP model is not in itself responsible for the New Zealand crisis of confidence in government. The real sources of difficulty are to be found among the special arrangements made for Maori representation, and the fact must be faced that changes in an electoral system cannot alone change a political culture.

Sir Malcolm Rifkind expanded on Sir Paul Reeves's theme, by turning from the roles of the Commonwealth in peace-keeping, to the roles of the United Nations. Effective peacekeeping, he argued, can occur only with the consent of the parties; enforcement may be needed, however, in the absence of such consent. The presence or absence of

consent itself governs perception of impartiality. The definition of a task at the outset, and of its completion, usually requires revision in the light of changing circumstances on the ground; these generate unavoidable questions for the UN on matters of international law. Political factors and public opinion often pull in opposite directions. The public are provided by the media with information which often masks the complexity of the issues or the difficulty of implementing decisive actions. There is a strong case for improving the UN command, control and planning capabilities. Many Governments object to a standing UN force, and yet, because there can be no reliable forecast of operational needs, a case-by-case assessment by individual governments is clearly inefficient. We do not know where and when crises will occur: we do know, however, that they will occur. For those reasons the search for peace and the maintenance of it remain perennial tasks.

A number of concepts reverberate throughout these lectures: consent and consensus, forgiveness and remembrance, religions and rights, democracy and power, sovereignty and nation states. If, as all the lecturers contend, these notions require not just elaboration but, in some cases, revision, serious challenges face those who must undertake such constructive endeavour, whether they be governments or academies. The description of the events central to these lectures, however, might suggest that only cautious optimism is warranted. The first and the last sentences of the lectures refer to peace; they signal a yearning to be nourished, in the face of other evidences of the human condition.

BIOGRAPHICAL NOTE OF FELLOWS

Mr David Lange was Prime Minister of New Zealand from 1984 to 1989, holding also the portfolios of Security and Education. He was called to the Bar in New Zealand in 1966. He became Leader of the Opposition Labour party in 1983, and Minister of Foreign Affairs in the following year, when the party was returned to office. From 1989-1990 he was Attorney General.

Sir Paul Reeves was Governor-General of New Zealand from 1985 to 1990. He was Bishop of Waiapu from 1971 to 1979, and of Auckland from 1979 to 1985. He was the Representative of the Anglican community at the United Nations from 1991 to 1993, and chaired the Fiji Constitution Review Commission from 1995 to 1996.

Sir Malcolm Rifkind was Secretary of State for Foreign and Commonwealth Affairs from 1995 to 1997. He was called to the Scottish Bar in 1970, and soon thereafter entered the national political arena. He was Secretary of State for Scotland 1986 to 1990, for Transport from 1990 to 1992, and for Defence from 1992 to 1995.

Dr Richard Sezibera MP qualified in Medicine from Makerere University, Kampala. He served as a military doctor in the Rwandese Patriotic Front, and was elected by the Army as their Member of Parliament in the first Government. He is a Special Adviser to the President of Rwanda.

Sir Ninian Stephen was Judge at the International War Crimes Tribunal for Yugoslavia from 1993 to 1997. He was a Judge of the High Court of Australia from 1972 to 1982, and Governor General of Australia from 1982 to 1989. He was Australian Ambassador for the Environment from 1989 to 1992.

COMMONWEALTH STRATEGIES FOR PEACE

PAUL REEVES

Clearly the Commonwealth's experience in election monitoring and observation is a positive contribution towards peace. But the Commonwealth has some other characteristics which are important for conflict resolution and the creation of a sustainable peace. Neil Saravanamuttu [*The Round Table* 1995:334] identifies some of them. The Commonwealth has developed expertise and credibility in certain geographic regions (South Africa) that gives it *authority*. It has a range of *human resources* (Secretary General, Secretariat, Eminent Persons) and it has *operational elements* such as a common language that give it a considerable advantage. The Commonwealth is perceived as *non-threatening* and able to build confidence among parties. Some might dismiss the Commonwealth as little more than a reminder of Empire and give it a low priority compared with the United Nations or some other regional organisation but clearly the Commonwealth can respond to conflicts among its own constituents even if it has only a limited effectiveness beyond its own borders. It is worth noting that while Britain's refusal to invoke sanctions against South Africa tested the limits of Commonwealth solidarity the sanctions went ahead, showing that even without unanimity the Commonwealth could still play an effective role.

Bosnia, South Africa, Northern Ireland and Sri Lanka show that the wounds born of conflict within a state are especially deep and hard to heal. When compatriots fight they seem to do so with an intensity and a passion that leaves a legacy of hate. To deal with it, each country has to find the right formula of accountability and forgiveness. South Africa has opted for the public telling of the truth. In those situations the demands of peace and justice must be balanced against each other. Justice is impartial and must respect the rights of the accused. Indeed the victims must obey the rule of law in a way that their violators did not.

I chaired the Fiji Constitution Review Commission and in that society, struggling to deal with its history of colonialism, military coups and an ethnically weighted Constitution of 1990, the questions which have to be faced are about building a sense of common belonging and common purpose while honouring ethnic identity and cultural and religious expression. The Fijians might well say "this is our country in a way it is no one else's country", while the Indo-Fijians will say "we have worked hard here and this is our home too". How do you reconcile what seem to be competing claims of belonging?

In many situations there is a need to build a community of values across ethnic divisions. People have to draw from the deep wells of their own traditions to find those values that sustain them and as the Fiji Constitution Review Commission said in its letter of transmittal to the President of Fiji:

> Progress in a multi ethnic society is achieved when its citizens realise that what is good for their neighbour must ultimately be good for them as well, when difference and diversity are seen, not as sources of division and distrust, but of strength and inspiration.

I propose to discuss constitution building, electoral arrangements and the role of religion in divided societies. Let us be clear about what constitutions can do and cannot do. Constitutions cannot control the unfolding of social forces or the creation of a newer and better society. Nor do constitutions encompass the whole range of forces that determine a country's development. The main lesson of Northern Ireland for other divided societies is that constitutional change must be accompanied by fair access to jobs, equal access to education and fairness and equality in the courts. Globalisation and movements of capital also require a new understanding of sovereignty as a shared possession and the nation-state as an entity whose boundaries are more porous than water tight. A constitution can set up institutions and give them resources and competencies but it cannot infuse them with values. It is relatively easy to design a consistent set of arrangements which would help a divided society move forward harmoniously but political compromise and the protection of group interests mean that the package is rarely accepted in its entirety.

So why should countries feel the need for a constitution and how would it help them secure a lasting peace? Often

people draw up a new constitution when they want their country to be governed in a new way. This was true of Fiji in 1970 and 1990 and South Africa in 1994. Government should rest on the consent of the people and so a constitution should be generally acceptable to all its citizens. In that regard the preamble to the Commonwealth Constitution Act of Australia provides that "the people .... have agreed to unite in one indissoluble Federal Commonwealth". But these *people* did not include Aborigines and Torres Strait Islanders because the Constitution was drafted in the spirit of *terra nullius*. Perhaps Australia has to revisit its Constitution and reconsider *the people* from whom it drew its authority. Most constitutions aim to control the actions of Governments, what they can do and how they should set about the business of governing. Constitutions seek to guarantee the rights of individuals and groups from state interference and many constitutions provide a Bill of Rights. People give themselves constitutions because they want an enduring basis of government which will outlast any particular Parliament and Government just as the rules of a game outlast a particular match. The advice of the Count Sieyès, constitutionalist of the French Revolution, is worth remembering: keep a constitution short, keep the language clear and non-technical, avoid flights of oratory and do not try to solve too many specific, short range problems as the constitution must endure for a long time. The Constitutions of South Africa and Uganda are admirable examples of countries which took the Count's advice.

Majoritarian government can present problems for multi ethnic or divided societies. Minorities do not equate democracy with freedom and participation but with the dominance of an adversarial majority group. The Westminster system of governance usually means small single member constituencies with First Past the Post electoral rules. The party which wins a majority of the seats forms the government while other parties remain in opposition. It is said that when majorities take power minorities take shelter. When minority preferences are intense and when there is little chance of their becoming a majority, then the recipe for conflict exists.

It is generally agreed that in an ethnically divided society, political parties, at least to begin with, are likely to be ethnically based. Away must be found to encourage them to come together to govern the country in a way that gives all communities a chance to take part. There are two broad approaches to the construction of democracy in multi-ethnic societies. There is the consociational approach, identified with Arend Lijphart, which sees ethnic groups as building blocks in the national political process. People will continue to vote communally and the voting system should ensure that each community is represented in proportion to its size. Ideally all ethnic groups will be part of a Grand Coalition. Then there is the integrative approach, identified with Donald Horowitz, which believes that in order to produce stable, multi-ethnic coalitions, political parties must have strong electoral incentives to cut

across ethnic lines and take account of the interests of the other communities.

The Fiji Constitution Review Commission wanted a voting system and electoral arrangements which would encourage multi-ethnic government, recognize the role of political parties and provide incentives for moderation and compromise across ethnic lines. It opted for the integrative approach which could encourage seat pooling by forming coalitions of parties that do not have enough seats to govern alone and vote pooling where parties exchange votes across party lines to ensure the election of candidates who would not win otherwise. The Commission provided for twenty five communal seats and forty five open seats to be voted for by using a preferential system known as the Alternative Vote. In the open seats, with all the voters on a common roll, candidates from one ethnic group, in order to be successful, would be required to seek support from the other ethnic group, mainly by trading second preferences. The arrangement subsequently agreed to by the Fijian Parliament is forty six communal seats and twenty five open seats. It needs to be said that just because two sides agree on something does not mean it will work, and the arrangement will certainly narrow the arena in which a political culture of moderation and compromise can grow. However the message is still there: on the reasonable assumption that politicians will do whatever they need to do in order to get elected, they must appeal to moderate sentiments among all ethnic groups and shun extremists in order to win. The assumption is that conflict in multi-ethnic

societies will be reduced when there is a centrist group of moderates who keep to the rules of pragmatic co-existence with other groups. When these conditions prevail, power-sharing in the executive and a movement away from the winner-take-all approach becomes possible.

Indeed in South Africa the provision in the Interim Constitution for a power-sharing Government of National Unity to function for a five year period till 1999 was the heart of the compromise that enabled the National Party and the ANC to reach agreement on the terms of a Constitution. Early in 1990 Mandela hinted at the need to address the concerns of whites that a universal franchise in a unitary state would result in the domination of whites by blacks. "That fear is genuine", he said; "it will be wrong but it is genuine; the ANC must address that fear". For his part, de Klerk in extricating white South Africans from apartheid could not be seen as handing over power completely to the ANC. Subsequently the National Party has found it difficult to straddle the competing roles of partner in the Government of National Unity and political opponent of the ANC, and has assumed the role of the Opposition. But the power-sharing arrangement has worked as part of the compromise that averted an indefinite bloody coup. For divided societies the message is that ruling groups are likely to accept fundamental change so long as it does not require an immediate or total loss of power.

Constitutions cannot prejudge the distribution of votes but

they can establish the criteria for determining that elections are free and fair. Avoiding the tyranny of the majority and preventing the exclusion of minorities will rely on the wisdom of political leaders and the development of a tolerant, inclusive and accommodating political culture. At the end of the day democracy is a mechanism for managing conflict. William Porter, Attorney General of the Cape Colony, got it right in 1853 when he said he "would rather meet the Hottentot at the hustings voting for his representative than meet the Hottentot in the wilds with his gun on his shoulder".

A constitution has the potential to mould the social and political system of a newly independent country and help to establish a liberal democratic polity. Yash Ghai [*Development and Change* Vol 28, April 1997] details the experience of Papua New Guinea, a country where traditional cultures persist strongly, the terrain is difficult and fragmented and the literacy rate is low. Historically there was no common political authority among the people though numerous clans came under the successive colonial administrations of Germany, Britain and finally Australia.

The Constitution was written by a planning committee of local Parliamentarians who hoped that it would replace foreign authority as the basis of the state. The work of the committee was influenced by the effect of liberation theology on one of their members, John Morris, a Catholic priest, and by the assumption that people had the capacity to make correct decisions and keep a Government

accountable. It was to be democratic but constrained by the Rule of Law. Yash Ghai reminds us that democracy is based on people but a Rule of Law exists to curb such power; democracy demands an open ended process and discretionary powers, while a Rule of Law needs a closed and regulated process, substituting rules for discretion. Rights serve to limit state power, while democracy might be a justification for its expansion. Rights are rational and purposive, but democracy is frequently messy and manipulative and oppressive of minorities.

To the observer, Papua New Guinea politics is confusing. There is no well established party system and parties which emerge after elections, such as those of 1997, seem more important for forming Governments and staying in power than for elections. A Prime Minister faces a constant possibility of a vote of no confidence and has to spend a lot of time satisfying the requirements of individual politicians. There are serious problems in Papua New Guinea, notably the continuing conflict on Bougainville and widespread poverty and unemployment which is reflected in a breakdown of law and order. It is also a fact that the political system of Papua New Guinea adheres somewhat less to democratic values and Parliamentary procedures than to the traditional notions of leadership and kinship. However, the Constitution and the political and legal system it established have survived. It is an open society, most rights are protected, no dictator has emerged, elections have been broadly satisfactory and the press is free. A constitution that cannot bend will break, but in

Papua New Guinea it has not broken and it continues to serve a country searching for its own unity and identity.

Last year, as part of the Commonwealth Observer Group to the elections in Ghana, I was travelling between Accra and Kumasi, when our car, so it seemed to me, was in danger of being flattened by an enormous truck towing a trailer. On the cab of the truck were painted the words *Washed in the blood of the Lamb*. My immediate reaction was to utter the name *Jesus Christ* with great fervour and feeling. Ghana is a country where there is a lot of overt religious activity. Many people go to the church or to the mosque. Politics is not an autonomous sphere and statecraft operates within a more encompassing realm of moral values and the underlying religious world views from which these values come.

In the West religion has been characterised more as a theological set of issues than a profound influence in political and social life. But in most parts of the world religion is a major factor in determining a nation's stability or instability. It is also an important defining characteristic of contending political parties. Religion does not inevitably decline in the process of Third World modernisation. Science, technology or secularisation have not dispelled the religious concept of the universe. Even revolutionary regimes, like Soviet Russia, which tried to replace religion with a comprehensive secular ideology, had to acknowledge that a substratum of religious belief and practice continued to exist underground. Religion, class

and ethnicity continue to be markers of communal identity and as such vital political issues.

Religions produce both peacemakers and hatemongers and we can think of situations where religions have stoked the fires of discord rather than extinguished them. Sometimes religions have been concerned with paths of personal salvation which emphasise other worldly goals and reject this world as corrupting. Judaism, Christianity or Islam seem to be controversial candidates for any constructive role in human rights. Their sacred texts say more about commandments and obligations than about liberties and rights. Pogroms, crusades, jihads, inquisitions and banishments have been used with devastating effect. But there are resources in spiritual traditions that can contribute to the healing of the human community. Hinduism, for instance, has the insight that what appears to be divided is at some level essentially one and conflict lies at the level of perception not reality. Buddhism advocates the principles of compassion, critical tolerance and wisdom that comes from experience.

Each of the world's religions contains harmonising and confrontational elements. Undoubtedly they will inform and influence the policy-makers of a state but they must do so without losing vital aspects of their spiritual essence. Given a lack of other strong social institutions, the church, mosque or temple can define values, social goals and even foreign linkages. Religious leaders, like Desmond Tutu, become political leaders in their own right. In all countries

a vast number of voluntary agencies, including religious institutions, stand between the state and the individual. The modem human rights movement was an attempt to harvest from the various religious traditions and the Enlightenment the rudiments of a new faith and a new law that would unite a badly broken world. *Article 1* of the United Nations Universal Declaration of Human Rights says:

> *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brother hood.*

In 1948 that statement had little basis in the post-war reality. The challenge for religious communities is to transform themselves from being agents that assist in the birth of rights norms conceived elsewhere, into associations that give birth and nurture to their own unique contributions to human rights norms and practices. The international community claims a responsibility to protect an individual's rights. But in so doing it will have to be sensitive about presenting rights as a universal indivisible and interdependent package, especially in Asia where the debate between individual and community rights and responsibilities, authority and freedom and the relationship between them is very real. Indeed an alternative to the "secular" approach of arguing for rights on the basis of universal claims to human rights would be to find sources for those rights in the cultures and religious teachings of Asia. It is a process of "cultural mediation" which would

aim to give meaning and effect to human rights within local contexts.

Dag Hammarskjold said the United Nations was "a venture in building an international community living in peace under the laws of justice". The Commonwealth as an organisation is more intimate and more modest than the United Nations but is not the loser for that. Before we consider preventative diplomacy, peacemaking and peacekeeping there are many things which the Commonwealth can do in order to sustain peace. I have spoken about constitution making and nation building, electoral arrangements for divided societies and the power and potential of religious traditions. I have done so on the principle that it is better to seek the dietitian rather than the heart surgeon, that is, to deal with root causes rather than the after-effects of conflicts.

GENOCIDE AND REMEMBRANCE: THE MORAL DILEMMA

RICHARD SEZIBERA

If I speak, my pain is not assuaged and if I forbear, how much of it leaves me? [Job 16:06]

O earth, cover not my blood, and let my cry find no resting place. [Job 16:18]

When I was asked to speak about the genocide in Rwanda, I faced a moral dilemma, and that is why I have chosen to talk about a specific aspect of the genocide: remembrance, and the moral dilemma this causes.

The dilemma I faced is this: How can one speak about the unspeakable? How does one effectively communicate to others the images that he himself has to shelve in the innermost recesses of his own mind if he is to function with any measure of efficiency in a fast moving world?

Is it permissible to look into the history of a people for pointers that help us try to explain the unexplainable?

And what really is there to say? Would it not be better for us all to contemplate and meditate on man's inhumanity to man in silence and make our individual vows that these horrors should never recur?

My dilemma is perhaps best expressed by Job when he says: "If I speak, my pain is not assuaged and if I forbear, how much of it leaves me?"

Speaking might not assuage the victim's pain but what it does is share it around in the hope that shared pain is diminished pain. So I will speak.

When one visits my country, Rwanda, today, one is struck by the apparent normality of the land, the beauty of its landscape, the cultivated fields and fertile valleys, an enchanting population that is as welcoming as it is hard-working. If one has time to visit the rare mountain gorilla forever immortalised by Dianne Fossey, he can be forgiven the thought that this is a foretaste of paradise.

Very few visitors get to realise that the land they are standing on echoes Job's passionate plea that his blood should lie permanently exposed, that it should not sink into the earth and so should never be covered by the fullness of time.

For Rwanda today is a country struggling to cope with the effects of a genocide of horrendous proportions, carried out against the Batutsi for the crime of existing.

This genocide of the Tutsi raises a host of moral issues for the international community, local politicians, the churches, and the ordinary rank and file Rwandese. These are some

of the issues I will highlight. I do not intend to take you through a detailed discussion of how the genocide was carried out or why it was possible. What I will do is just touch the tip of the iceberg of the moral maze that is post-genocide Rwanda, but before I do it, some preliminary explanations are in order.

I

On the 6th of April 1994 Rwanda's President's plane was shot down as it was descending for a landing on the country's international airport killing all on-board. An hour later, roadblocks had been put up in the whole of the capital and the genocide of the Batutsi, an event that had been planned with meticulous care over the years, had started. Before the plan could really get underway, however, a few final preparations had to be done.

Thus, before daybreak, all the Hutus in positions of authority who could thwart the plans had to be eliminated. Thus the then Prime Minister, Agatha Uwilingiyimana was killed, hacked to death together with her ten Belgian escorts. She was heavily pregnant at the time.

The president of the constitutional court was killed because he was a moderate, and constitutionally he was supposed to assume the powers of the presidency if anything happened

to the incumbent. All the other leading figures were either killed at the same time or went into hiding. The ascendancy of the genociders was complete and the work, as they called it, could begin.

Two questions beg asking:

A. **Who were the victims ?**

The victims were the Tutsi and the moderate Hutu who opposed the genocide. It is important to point out that in pre-colonial Rwanda, the terms Tutsi, Hutu, Twa - the three groups of people who make up the country - were terms used to describe the social category of the person.

Those who were predominantly cattle keepers were called Batutsi, those who made their living primarily through agriculture were the Bahutu and those who were primarily potters and hunters were known as the Batwa.

Being a Tutsi or a Hutu therefore depended on one's possession of cattle, which were the symbol of wealth *par excellence*. Today's Tutsi could be tomorrow's Hutu and *vice-versa* depending on the vicissitudes of life.

The groups shared and still share the same culture, speak the same language, show massive interclan penetration and live together with no separate geographical location for any one of them.

In 1931, the Belgian colonialist rigidified the country's social structure. He introduced identity cards and anybody with ten or more cows became a Mututsi, anybody with less became a Muhutu, and those who owned neither cattle nor land became Batwa. An elaborate superstructure was of course created to support this ethnicisation of society but this is an issue I discuss elsewhere.

I have raised this point because many of the Tutsis who died during the genocide died because they were identified as such by the identity cards they carried.

The First and Second Republics continued with this colonial structure and the last census organised in 1991 put the figures of the Hutu as 90%, the Tutsi as 9%, and the Twa at 1%.

The whole attempt at carrying out a comparative census was of course complicated by the fact that it was difficult to place the offsprings of mixed marriages between the communities, which was a significant percentage of the population. They were arbitrarily placed within one group or other, sometimes depending on the amount of money they had to bribe the local bureaucracy.

Post-genocide Rwanda has decided to abolish cards mentioning these classifications and so the last figures we have of the comparative numbers of the three groups will remain the 1991 figures, flawed as they may be.

B. How was the Genocide Carried Out?

Some people comparing what happened in Rwanda with what happened in Nazi Germany contend that there could not have been a genocide in Rwanda because the country was not as sophisticated as Germany and did not therefore have the capacity to carry out genocide. This is outright denial of the facts. Other people, however, genuinely fail to comprehend how one million people could be killed within three months in a country that is technologically backward.

The answer to this is that Rwanda may be technologically backward, but it is administratively advanced. The country, only 26340 square km, is divided into 11 *préfectures*, over 145 *communes*, more than 400 *secteurs*, I don't know how many *cellules*, and every ten houses has an administrator. For a population of7 million people this meant that the ten-cell leaders alone amounted to ten thousand countrywide, and this may be a conservative estimate.

This extremely hierarchical administration meant that every ten-house leader made up the lists of the Tutsi under his leadership and, once word was passed out to kill, made sure the Tutsis in his area were dead. This was relatively easy to do.

The insurmountable logistical problem proved to be the disposal of the great numbers of bodies, and so a majority

of them were simply left lying where they fell. Only now, three years later, do we estimate that we have managed to bury most of the bodies, after a massive nation-wide effort.

The Rwandese genocide could therefore be considered an *administrative genocide*, if you will.

In addition to the efficient administrative structure available, however, experience had shown the genociders that it was possible to kill large numbers of people and get away with it, as long as you managed to hang on to political power.

A series of experimental genocides had proved this, starting as far back as 1959, reaching their apogee in the 1990s.

In 1990 the Bahima, a group of pastoralists in the northern part of the country were wiped out. In 1992, the Bagogwe, another group of pastoralists, were also wiped out. It was during this experimental genocide that the authorities realised that it was impossible to exterminate large numbers of people using only the army and its weapons, because this exercise was too costly. They therefore intensified the training of militia, the now notoriously renowned Interahamwe, and bought massive quantities of machetes, hoes etc with the help of loans acquired from international finance. At the same time the population was mobilised, and anti-Tutsi sentiments whipped up through Radio Television des Milles Collines and other extremist media,

and an impressive array of extremist newspapers like Kangura. The plan was now complete and what was needed was the signal. The death of president Habyalimana provided such a signal.

II

The Rwanda genocide and the task of remembrance create undeniable moral dilemmas. It is undeniable, in retrospect, that the victims occupy the moral high ground, but this is not always evident during the genocide itself. The propaganda machinery may function so well that the wiping out of a race or religion or group of people may well seem to be the right thing to do. How else can one explain the fact that a great many ordinary people seem to show the baser side of humanity so gleefully?

While genocides are conceived and planned by a relatively small number of people, their execution only becomes possible through the active or passive support of large numbers of otherwise normally morally upright people.

One of the most perplexing questions is how the Rwandese genocide could have taken place in sight and knowledge of the international community with minimal reaction. I am as puzzled as everyone else, so I will just point out that at the time of the genocide all the warning signs of an impending catastrophe were glaringly visible to all observers of my

country, and evidence suggests that both the UNAMIR force commander and the special representative of the United Nations were aware of what was happening. It is difficult to believe that foreign embassies did not know of the unfolding pathology, since this was being broadcast on the local media. And yet, when the killing began, the impressive international military and diplomatic might present in the country played a minimal role in the defence of the victims. It took the Rwandese Patriotic Front, acting alone, and sometimes paradoxically *against* the desires of an international community more interested in a ceasefire, to bring a halt to the genocide.

The collapse and enforced impotence of the moral, diplomatic, and military might of the international community during the genocide in Rwanda, in the service of a mythical "neutrality", is one of the more frightening legacies of the genocide and should preoccupy the minds of all of us until a solution is found. Otherwise "never again" will continue to be an empty cry.

In the light of all the above, when the horror is finally over, is it not true that the people who are mostly likely to do the remembrance are the people who were either neutral during the genocide or were somehow not its direct targets together with, understandably, a minority of the direct survivors of the genocide?

The survivors of a genocide have seen so much, been on

the brink of insanity for so long, that it becomes very difficult for them to believe that participation in the mundane activities of a post-genocidal era is worth it. The moral debates that finally follow the genocide may be seen as the playgrounds for those who, for some reason or the other, were not directly affected by the genocide in a personal way.

One survives a genocide in many cases through a mixture of luck and some very painful personal decisions. Thus many of the females who survived the genocide in Rwanda had to let their bodies be abused by the killers; this immediately after the loss of their loved ones, including husbands and children. Survival for these people is never a cause for unalloyed rejoicing, because it is tinged with painful memories and the ambivalent conviction that maybe the only fitting tribute for the dead is absolute silence; that the exteriorization of grief banalises the memory of the dead, because no one can ever understand the immense solitude of the human being forced to confront in a very personal way, the ultimate nothingness. For these people, therefore, a truly meaningful remembrance can only be absolute silence, and my talk today would be considered not only as being in bad taste but also as a banalisation of the unthinkable.

For others, silence is the ultimate sign of betrayal and constitutes the sin of forgetting. They believe that the truth must be shouted from the hill tops, that they should bare

themselves to the whole world in the belief that this evil, this wound that was inflicted on them, was an insult to the whole of humanity and it should therefore share in the pain.

I believe that remembrance can never be personal. It must be shared by the whole of humanity, and the victims' blood should never, as Job cried out, be covered by the earth. That their cries should find no resting place but should continously sear the memories of the living.

In the 145 communes of my country, survivors have courageously agreed that the remains of their loved ones should not be buried. That they should continously serve as a gruesome reminder to humanity that the struggle for a just world, and the promotion of the good that is found in us, can never be a passive one for, as Professor William Calin reminded me the other day, HOMO HOMINI LUPUS.

This approach to remembrance, while courageous, does have its own pitfalls. During visits to some of the sites, people take photographs. Journalists write articles, some of them derogatory, while others look on indifferently, for it is difficult for the human mind to imagine a catastrophe of such proportions.

It is not difficult to imagine that in Rwanda's struggle to keep the memory of the genocide alive in the collective psyche of the world, recourse will be made to the tactics

that keeps mass tourism alive. Shops will be set up to sell souvenirs; half hour tours will be organised for those who wish to visit the sites. An interest in Africa wanes with the movement of that continent to the outer margins of the global village, I can envisage the hurt and the pain that will follow from a zealous desire on the part of my countrymen to attract more and more people from an increasingly indifferent world to share in their grief.

Remembrance of the Rwanda genocide is likely to keep on resuscitating contradictory and diametrically opposed interpretations. Some people will look at the sites and interpret the happenings as the convulsions of a basically primitive tribalistic African psyche, and thus reinforce the smug convictions that the African is still in acute need of the civilising influence of the white man - a view propounded vociferously by some Africans themselves.

Others, including the survivors of the Rwandese genocide, will continue to visit the sites of remembrance, not as tourists but as pilgrims. It is my conviction that remembrance will continue to have these two elements of tourism and pilgrimage, and that mechanisms should be found to limit the destructive effects of unfettered tourism. But the option of silence, morally compelling as it may be, is not a viable option in the modem world.

The Rwandese genocide is riddled with internal contradictions. It is about the absence and the death of

God. It is about the need to believe in God and faith in the future redemption from tragedy and catastrophe. A characteristic of the genocide is that many of the killings were carried out in churches and mosques. The victims, mortally wounded in their souls by what was happening to them, sought spiritual solace from the physical representation of God's dwelling among men, and hoped that they would at least receive physical security, if not moral succour, from the houses of God. The churches and mosques therefore became major centres for the congregation of a desperate humanity. The killers in their bid to dehumanise and desecrate what values society held dear, killed people in the churches, threw grenades in the mosques and macheted babies on the altars.

Post-genocide Rwanda is about belief in humanity, belief in God, and man's temporal relationship to the eschatology espoused and propagated by many of the world's great religions.

A heated debate has developed in Rwanda, between the survivors of genocide and the Catholic church about what should happen to the churches in which people were killed.

Some people would like to see them turned into cemeteries. They believe that they should be closed and sealed till eternity, and tombstones put on them to indicate who died there and when. Others would like them to be turned into museums, open to the public, containing the remains of the

dead but not turned into merely the final resting places of the departed. The Catholic hierarchy would like to see the churches cleaned out of the evidence of man's inhumanity to man, and used as places for the celebration of the goodness of God, drawing inspiration from the fact that even the desecration of the places of worship does not make the divine tum away from his mortal creation.

The Rwandese genocide is therefore about the conflict between the bitter reality and the symbol of the cross and the crescent; between recent history and eschatological myth; between the gruesome visible and the sweet invisible. This conflict, while existing since the beginning of time, is made infinitely more vivid for those who have reached the brink of the abyss.

I believe the churches will have to be used to serve all the contradictory demands placed on them because the Rwanda genocide teaches us that places of death are both museums and cemeteries, and, through remembrance, a celebration of the forces of life over those of death.

Finally, genocide for Rwanda, is about humanity and society. It is about the imperative need for justice and the overwhelming desire to celebrate community. It is about the balance between history and progress, about using history as a justification for doing nothing or using it as a springboard for emancipation.

In many ways, the way in which Rwanda remembers and handles the legacy of genocide will either vindicate those who believe in the essential goodness of man and humanity's inexorable progress towards enlightenment, or give reason to those who believe that each of us is born to make his or her own contribution to the futile fight against the wolf in us.

The issues in Rwanda are starkly clear, even though there are those who would rather blur the lines. They divide on one hand, the good with its human imperfections, and evil on the other, in spite of any saving graces it might have.

In 1945, some of the perpetrators of the Jewish holocaust were arrested and judged by the victorious allied forces. Trial was speedy and sentences were executed immediately.

Legal scholars might forever debate about the correctness or otherwise of the Nuremberg trials, but the results thereof certainly contributed to what justice is for anyway, namely the assuaging of the immense hurt of the victim, and the affirmation that society collectively will not tolerate descent into evil, and that the fight against impunity is a noble one.

Despite the trials, acts of individual revenge claimed an untold number of lives. I am told that in France alone, incidents of summary executions claimed over 70,000 lives.

Rwandese must see that justice is done, that it is not like Jupiter – neither here nor there, present but distant and unavailable. They must see that evil is not rewarded lest they take the easier but deadly route of retribution and revenge.

Rwanda's genocide gives us all this moral imperative of making sure that justice is provided because, in the last analysis, genocide is about the survival of the human race with all its diversity and imperfections, or its sacrifice at the altar of purity, conformity, and unmitigated tolerance.

WAR CRIMES TRIALS

NINIAN STEPHEN

International Humanitarian law and, in particular, the prosecution of war crimes have a very long history. Its origins reach back to Old Testament and Classical times and to .ancient Chinese and Hindu texts which dictated humane treatment of the captured enemy. Both early Christian and Muslim teachings also sought to moderate the inhumanity of war, just as had passages from the Old Testament. From the rulings of early Lateran Councils until the spate of post World War II war crimes trials, war crimes have been the subject of proscription. Medieval jurists in their writings expounded the *jus armorum*, regulating the conduct of soldiers within Christendom, and the laws of chivalry. In the seventeenth century Hugo Grotius, in his great work on the laws of war and peace, taught that those of the enemy who surrender should be spared and condemned the taking of reprisals against prisoners. In this century at least we have fallen sadly short of the Old Testament's answer in *2 Kings 6* of Elisha to the King of Israel who asked whether he should slay his prisoners of war and was told "You shall not slay them. Would you slay those whom you have taken captive with your sword and bow? Set bread and water before them, that they may eat and drink and go to their master".

It was not, of course, always motives of humanity that led to the sparing of lives; in the Middle Ages the prospect of

ransom was a powerful incentive, for only the living could be ransomed and then only those with the appearance of wealth, as apparently the Scots learned to their cost; the great slaughter of the Scots at the battle of Musselburgh in 1548 has been explained by Grose, surely himself no Scot, writing in the 18th century, by the fact that "their mean appearance gave little hopes of their ability to pay ransom".

Henry V during his wars in France promulgated ordinances of War which had humanitarian aspects, protecting under penalty of death women from rape and children from being taken prisoner unless worth holding to ransom. By way of contrast, Shakespeare's Henry, in his speech before the walls of Harfleur, is made to threaten the unfortunate inhabitants with the whole gamut of war crimes if they do not surrender - his soldiers he described to the unfortunate citizens as

> *...rough and hard of heart,*
> *In liberty of bloody hand shall range*
> *With conscience wide as hell, mowing like grass*
> *Your fresh-fair virgins and your flowering infants.*

Not stopping there he goes on:

> *Your fathers taken by their silver beards,*
> *And their most reverend heads dash'd to the walls;*
> *Your naked infants spitted on pikes*
> *Whiles the mad mothers with their howls confus'd*
> *Do break the clouds...*
>
> [*Henry V*: Act III.iii.11]

All this is threatened unless Harfleur is to be surrended, which the citizens wisely do and Henry accordingly orders his army to "Use mercy to them all". Henry's threats are sadly reminiscent of scenes in Bosnia and Rwanda more than five and a half centuries later, in the 1990s.

It was just such outrages that led the United Nations Security Council to create the International Criminal Tribunal for the Fonner Yugoslavia in 1993, soon followed by the creation of a similar Tribunal for Rwanda, steps which mark a dramatic new departure in international humanitarian law.

For the first time ever the nations of the world have, through the agency of the United Nations, created international judicial tribunals with the task of prosecuting serious breaches of international humanitarian law in armed conflict, doing so by resolutions of the Security Council and on the authority vested in it by Chapter VII of the UN Charter.

International judicial tribunals are, of themselves, no novelty. For almost one hundred years the International Court of Justice and its predecessor, the Permanent Court, have exercised judicial power in the resolution of disputes between nations. The two International Criminal Tribunals do not, however, adjudicate in disputes between nations; their mandate is quite different. They are criminal courts concerned with the acts of individuals and their jurisdiction is confined to two specific regions, former Yugoslavia and

Rwanda, and to acts committed by individuals in those regions during their times of bloody conflict.

The law which the Tribunals enforce is no new law but well-established, though hitherto all too often disregarded, international humanitarian law. The origins of that law, in its modem form, is commonly said to be on the battlefield of Solferino where, in the summer of 1859, a horrified bystander, the Swiss Henri Dunant, was appalled by the spectacle he witnessed (and in those days spectators could view the spectacle of battle being waged, just as commanders could direct the waging of it from some nearby hilltop). What he saw was the spectacle of the wounded left to suffer and die, untreated and uncared for and attended only by the scavengers of war, there to pick over the corpses of the fallen. Dunant moved the conscience of the world with his description of what he had seen and, together with other Swiss citizens, he founded what became the International Committee of the Red Cross. From its efforts, supported by the Swiss Government, came the first Geneva Convention of 1864, which provided for the rescue and care of the wounded and protection for medical workers and hospitals. In 1899 the First Hague Peace Conference adapted those principles to warfare at sea. Then, during this century and largely out of the century's own dire record of conflict and persecution, came a series of international conventions to which nations of the world are parties. They seek to humanise warfare by prohibiting the use of certain weapons and by affording protection to non-combatants and those soldiers rendered

hors de combat. Notable among them is the 1907 Hague Convention IV Respecting the Laws and Customs of War on Land and its Regulations. It declared that "the rights of belligerents to adopt means of injuring the enemy is not unlimited"; it prohibited, *inter alia*, the killing or wounding of defenceless enemies and required the humane treatment of prisoners of war. The Geneva Conventions of 1929 provided rules for the protection of wounded and sick in armies in the field and for the treatment of prisoners of war. Then, following World War II, four revised Geneva Conventions dealt in 1949 with these and other topics, including the protection of civilians in time of war. They have been added to in two Protocols of 1977. Also, as a result of experience of the horrors of the Holocaust, the Genocide Convention of 1948 came into being. It is the *grave breaches* provisions of those four Geneva Conventions of 1949, the 1948 Genocide Convention, the Hague Convention IV of 1907, together with those crimes against humanity recognised in the Charter of the International Military Tribunal of 1945 that, having now unquestionably become part of international customary law, are the source of the subject-matter jurisdiction of the two Tribunals.

The judges of the two Tribunals are appointed for four year terms by a process of selection through votes of the members of the Security Council and of the General Assembly of the UN. The Yugoslav Tribunal has eleven judges, forming two Trial Chambers of three judges each and an Appeals Chamber of five judges. The Rwanda

Tribunal, on the other hand, has only six trial judges; the five judges who for the time being form the Yugoslav Appeals Chamber also constitute the Appeals Chamber of the Rwanda Tribunal. Each Tribunal has its own large prosecution section which is entirely distinct from and independent of its judicial arm but is headed by one and the same Prosecutor, who is appointed by the Security Council. Each Tribunal also has its own Registrar and registry staff.

As a judge of the Yugoslav Tribunal, in saying something of the work we do and the problems we face, I shall concentrate upon the Tribunal I know best, the Yugoslav Tribunal, having only once visited the seat of the Rwanda Tribunal in Tanzania as a member of our shared Appeals Chamber.

The judges of the Yugoslav Tribunal, whose seat is at The Hague, come from all five continents and necessarily from very different legal systems. Of the present eleven judges, two women and nine men, eight were formerly judges of the superior courts of their countries, two were professors of international law and the remaining judge is a former Minister of Justice and Attorney-General. Our *lingua franca* tends to be English, with which our French judge copes manfully while occasionally reminding us that there are two official languages of the Tribunal, French and English.

Arriving at The Hague, upon appointment in 1993, we found a brand new Tribunal, without courthouse, staff or

library. One of the unique features of the Tribunal is that, necessarily lacking any government to provide the multifarious adjuncts of justice, we provide them for ourselves. Thus we have had to identify and secure premises suitable to house the some three hundred people who work in the Tribunal, recruit our own large teams of investigators, principally from national police forces, and prosecutors, from the ranks of experienced counsel around the world, and secure a whole array of interpreters and translators, to deal with the languages of Yugoslavia and our two official languages, and our own security officers and ushers; at the same time constructing our own first courtroom, with a second now in the making, and our own detention centre.

We administer our own system of legal aid. Suspects and accused are represented before the Tribunal by counsel of their choice and if they lack the means to pay for representation the Tribunal pays for their counsel. The Tribunal also administers its own detention centre to hold those awaiting trial or being tried, but those convicted and sentenced serve their sentence not there but in the prisons of those nations who have declared their willingness to take them. Since intrinsic to our function is transparency of procedures, we televise all our court proceedings and make the results available to outside networks, and we have extensive public and media relationships. Needless to say, the Tribunal also has extensive, and in some cases uneasy, relationships with the various successor States of the former Yugoslavia since it is in the territories which they

control that most investigations have to be conducted and where the great majority of persons accused of crimes and indicted by the Prosecutor are to be found or unfortunately, to put it more accurately, are all too often not to be found, although known to be there.

So much for the constitution and functioning of the Tribunal. Created as it was to contribute to the restoration and maintenance of international peace, placed at risk by the violations of international humanitarian law occurring in former Yugoslavia, including mass killings and ethnic cleansing, the Tribunal's immediate task has been, through the office of the Prosecutor to prosecute and secure the arrest of, and through the judicial arm of the Tribunal to try, those accused of serious crimes already well recognized as being in breach of customary international law. This involves two stages; first, lengthy investigation which in a national context would be the work of a police force and which is undertaken by the Office of the Prosecutor; then the arrest of those indicted, if that can be effected, and their trial before a Trial Chamber followed, inevitably it seems from present experience, by appeal to the Appeals Chamber.

The Tribunal is confined, in its sentencing powers, to the imposing of terms of imprisonment, UN policy being firmly opposed to capital punishment. So too with the Rwanda Tribunal, where you have the contrast between the national courts of the government of Rwanda, which dispose expeditiously of trials of war criminals, conviction

being followed by sentence of death, while the Rwanda International Tribunal accords the accused who appear before it with all the time-consuming elements of a full and fair trial followed, on conviction, with a jail term as its only sanction. Trials *in absentia*, where a person who has been indicted cannot be arrested, although common enough in some legal systems, are also not permitted before the Tribunals; an accused must be brought in person before a Trial Chamber if he is to be tried.

This represents a very real difficulty for a Tribunal possessing little by way of direct compulsive power on individuals beyond the precincts of its court in The Hague and having generally to rely on the co-operation of States for the arrest of those accused.

The Tribunal was early confronted with situations in which its indictments and warrants for arrest were ignored and those accused who had been indicted felt secure in safe havens within certain successor States of the former Yugoslavia. A partial solution was found in a novel procedure which, while wholly observant of the prohibition of *in absentia* trials, yet went some way towards fulfilling the task given it by the Security Council. The Tribunal initiated a process, founded on Rule 61 of its Rules of Procedure and Evidence, a rule devised to deal with such accuseds. I should explain that every indictment must in any event initially be reviewed by a judge and only when he or she is satisfied that the Prosecutor has made out a *prima facie* case will it be confirmed and an arrest warrant issued.

If subsequently the warrant of arrest cannot be executed and the indictment served on an accused despite the best efforts of the Prosecutor, the Prosecutor can seek an order of the confirming judge for submission of the indictment to a Trial chamber of three Judges in open court, together with all the evidence which had been placed before the confirming judge and such other witnesses as the Prosecutor may call. Those Judges hear that evidence and also an account of the unavailing efforts to serve the indictment and arrest the accused. If satisfied that there are reasonable grounds for believing that the accused has committed the crimes charged in the indictment, the Judges issue an international arrest warrant which is transmitted to all States, but there is, of course, no trial in the accused's absence nor any question of his conviction.

The outcome is that the accused becomes liable to immediate arrest and subsequent trial if he leaves his particular safe haven. At the same time, because the proceedings before the three Judges are in public and are televised they receive considerable publicity, making such arrest more probable should the accused venture into the territory of a State less sympathetic to him.

The procedure has been used on a number of occasions, notably in the case of the former President of Serbian Bosnia, Karadić and his co-accused, General Mladić.

It is from the office of the Prosecutor that would come the human interest stories that would make a much more

interesting talk, for those of strong stomach, than anything I can offer. The concern of the judges, like judges everywhere, is the more mundane task of ensuring that justice is done, that trials are fair and open and that the law is, and is seen to be, properly administered. But that in itself is a considerable task, involving many entirely novel situations, the encountering of problems of procedure and of evidence not met with in national courts, and the interpretation of laws hitherto little explored, all fascinating to lawyers though, I am afraid, lacking in wide popular appeal.

To someone coming from a common law system perhaps the most immediately striking thing about our trials has been that they are conducted before three judges and without a jury, the judges being the triers of fact, as well as of law. One consequence is that judgments of the Tribunal necessarily examine the evidence at length and give reasoned statements for the conclusions of fact arrived at from that evidence.

Another consequence is that the three judges may not arrive at identical conclusions of fact and law. In many civil law systems, where judges also generally sit without juries, the practice is often for the court to produce a single short judgment with no provision for the expression of any dissenting views. The Tribunal has not adopted this course; instead, dissenting judgments, especially on matters of law, are frequent, as they are in the common law world. So far as I am aware, dissents on matters of fact have not yet

appeared, but this too may arise and it will be the majority view which will prevail.

A second unusual feature of our trials is that they are conducted not merely in public, but very often in the glare of publicity, the extent of which varies greatly depending on the public interest in the case in hand. As I have said, all our trials are televised, and televised summaries are regularly transmitted by an outside agency to the territory of Former Yugoslavia, and also by TV stations world-wide when anything especially newsworthy is taking place. Then journalists appear as by magic when public interest in a case has been aroused, and there is regular attendance by assigned correspondents of the main news agencies, the media on the Continent being especially active in reporting proceedings. On one exceptional occasion I recall having to struggle through just over 300 journalists to get into the Tribunal building, but their attendance all depends upon what their editors regard as newsworthy. As well there are, of course, members of the public in greater or lesser numbers in the public gallery.

The trial procedure of the Tribunal, evolving as it has in the light of experience as the years have gone by, is very much that of the common law, and this because the Statute of the Tribunal mandates features which are in themselves typical of common law systems - an essentially adversary, rather than inquisitorial, system. The accused is required to plead to the charges against him, being presumed innocent until proven guilty, there being no *juge d'instruction* and no

dossier submitted to the trial court; instead, there is a Prosecutor entirely distinct from the judicial arm, whose investigators perform the role of British police detectives and whose legal staff function much as do prosecutors for the Crown in the UK. All prosecution evidence is presented in court and subject to active cross-examination by counsel for the accused.

One consequence of the absence of a jury is that we have felt free to have our rules of evidence depart somewhat from that of the common law; thus, we have no rule for the exclusion of hearsay evidence. Instead, all evidence is admissible, to be weighed for relevance and probative value and to be subject to rejection (*inter alia*) if, while of less than compelling probative value, it is at the same time highly prejudicial in character. We also exclude, in cases of alleged sexual assault, all too common in the cases that come before us, evidence of prior sexual conduct of the victim, and do not regard corroboration as mandatory.

One of the troubling aspects of our trials has been the reconciliation of the rights of the accused with those of witnesses. The dominant feature of our trials is that they should be fair, with the rights of the accused being fully safeguarded. In Article 20 of our Statute fairness and full respect for an accused's rights is mandated. Article 21 then entitles an accused to a fair and public hearing in his presence, and to be presumed innocent until proved guilty. He is guaranteed prompt and detailed knowledge of the charge against him, adequate time and facilities to prepare

his case, a right to counsel of his choice, to the provision of legal assistance, to examine witnesses against him and call witnesses in his defence and to the assistance of an interpreter. All this can be ensured by a properly conducted trial and this the Tribunal, in its Rules and in the conduct of trials, seeks to ensure.

So far so good. However the Statute also recognises other rights: those of witnesses. And here is where problems arise. The Statute in the same Article 20 requires not only that full respect be had to the rights of an accused but that there be due regard for the protection of witnesses. This is then made the subject of a distinct Article, Article 22, which contemplates that the Tribunal's Rules shall provide for such protection, which shall include but not be limited to the conduct of *in camera* proceedings and the protection of a victim's identity. These are far-reaching requirements, expressed in few words but portending much. What should be involved in their implementation is necessarily an evolving matter; only with considerable experience in the conduct of trials will all aspects of its implementation become apparent. What is already clear is that its reconciliation with the rights of an accused is fertile ground for difficulty.

Why this is so is easily explained. An accused will want to know the identity of witnesses against him and will want to investigate in advance of trial the circumstances of each witness so as adequately to test at trial that witness's veracity and, if possible, to show that he is not to be

believed or that his evidence is otherwise unreliable. For an accused before a national court charged with an offence committed within the territory of that nation and entitled to know the identity of witnesses who are to testify against him, as he customarily will be, this is task enough. It becomes much more difficult when the accused and his advisors are in The Hague, witnesses are widely dispersed around the globe, as may be the case with refugees, and are in need of protection regarding their identity.

The Tribunal operates without the assistance of any sovereign State of which it is a part, and without the whole array of a State's law enforcement mechanisms at its disposal. It has no police force of its own nor Ministries and, ultimately, legislatures concerned to uphold its procedures and give effect to its orders. Its proceedings relate to events which occurred at great distance from The Hague, in former Yugoslavia, with which speedy and reliable communication is not always available; the witnesses to appear before it come from afar, often from still very troubled areas; they usually only speak and understand a language other than the two languages of the Tribunal, French and English, and they often have relatives still in former Yugoslavia for whose safety they fear. All this applies not only to prosecution witnesses but also to witnesses for the defence, many of who may still be resident in former Yugoslavia and who in some cases, especially if they are members of the police or armed forces, may be in especial difficulty if the current administration of the territory in which they live, and to

which they must return, has little love for the Tribunal. Such an administration may either impede their appearance re it, or make all too clear to them on their return its disapproval of their having recognised the Tribunal's existence by testifying before it.

It is against that background that the Tribunal is faced with task of according full respect to the rights of an accused, while at the same time ensuring due regard for the protection of witnesses.

The problem is likely to be encountered in very many of the trials before the Tribunal. Nor is it, as I have said, by any means confined only to the case of prosecution witnesses. Defence witnesses will, for a variety of sound reasons, seek protection, fearing that they or their families will be victimised because they give evidence. They may also, for quite different reasons, seek protection of another kind, immunity from arrest while in The Hague, fearing that once they are within the reach of the office of the Prosecutor they may be arrested and indicted as war criminals. But that is another matter, although it does bear on the right of an accused, since unless such immunity is granted a defendant may be denied the testimony of essential witnesses.

A variety of practical measures can be and are taken to accord protection to witnesses: *in camera* proceedings, shielding the witness from view from the public gallery, or otherwise ensuring non-disclosure to the media and the general public of the identity of witnesses where good

cause is shown, as by obscuring the witness's face and/or distorting his voice in television broadcasts of the proceedings; all this can ensure confidentiality so far as the world is concerned, while in no way depriving the accused and his counsel of the ability to test the evidence of the witness. To be sure, such measures detract to a limited extent from the general requirement that the trial be a public hearing, something that both the Statute and the Rules of the Tribunal emphasise, but courts world-wide recognise that this requirement may have to be sacrificed in specific cases, including the case of protection of the identity of witnesses. Any such measures should only be adopted where, in the case of particular witnesses, a convincing case is made out for their need. This has in fact been the practice of the Tribunal.

What is more difficult to deal with is the problem not of confidentiality of witnesses, in the sense of exclusion of the public and media from the giving of evidence by witnesses in need of protection, but of anonymity of witnesses, meaning denying not only to the media and the public, but also to an accused, knowledge of the identity of a witness. This is where the real problem arises of a conflict between the rights of an accused and the rights of a witness.

It would arise in its most stark form if an accused and his counsel were to be confronted in court with a witness whom they cannot see, whose identity has, for his protection, not been disclosed to them, and whose evidence cannot accordingly have been in any way investigated in

advance of his or her cross-examination. From the accused's point of view it is little better if only his counsel are permitted at trial to see, and know the identity of, the witness but are not permitted to divulge this to the accused and obtain his instructions regarding that witness and his evidence. Yet particular witnesses may well fear that any disclosure of their identity, accidental or otherwise, to an accused may not rest there but will be disclosed and ultimately bring with it dire consequences for themselves or their family.

All this confronts the judges with the difficult task of balancing the rights of the accused with that not only of the witness but also of the prosecution, which will want to fulfil its duty of presenting in court all the evidence available to it relating to the crime with which the accused is charged.

The problem has been discussed at length in judgments of the Tribunal but remains a troubling matter whenever witnesses have good grounds for fearing for their safety or that of their relatives if they give evidence. This is especially the case when witnesses come from territories in which hostilities are on-going or which are still in a state of upheaval as a result of recent hostilities. All this is no novel problem. It has been encountered by the European Court of Human Rights and by national courts. The special circumstances of the ICTY are however such as to make it more acute and particularly likely of occurrence in trials before it. As many of you will know, there are proposals

for the establishment of a permanent international criminal court whose jurisdiction would at least extend to war crimes. Any such permanent international criminal court is likely also to encounter this problem if witnesses come from territories where the rule of law cannot be relied upon to afford them complete protection. It would seem essential that clear guidelines be provided in such a court's charter for the resolution of conflict between an accused's rights and the adequate protection of witnesses.

This is but one instance of the kind of problems encountered by a new tribunal entering a largely unexplored area of law. Long-established legal systems build up their own complex procedures and evolve their own doctrines over the centuries. Innumerable procedural questions arise, from the very initiation of a prosecution, with the interviewing of suspects and the obtaining of statements from witnesses, through the framing of indictments, the arrest of the accused, the taking of his plea of guilty or not guilty, the conduct of the trial itself and, if found guilty, the sentencing process; all these stages acquire, in national systems, an encrustation of practice evolved from experience which hardens into law, deviation from which may invalidate the criminal process. No initial set of rules can hope to cover all contingencies, only by very gradual evolution will a code of proper procedures emerge. In the case of the Tribunal this process of evolution has had to occur at great speed and against a background of the very different experiences of eleven judges, each from his or her quite disparate legal system. Perhaps the most remarkable

and encouraging thing has been the extent to which on these matters of procedure relative unanimity of view has emerged. The basic ingredients of a fair trial do not seem to diverge greatly from nation to nation.

But it is not only in matters of procedure that virgin soil has had to be broken. The law we administer is itself skeletal in character and, far from comprising one concise and internally consistent code, it is comprised very largely of international conventions framed in very general terms so as to attract as parties to it the world's nations, each vigilant of its own particular interests. National laws can be passed by governments having a clear policy in mind and with a particular aim in view. International conventions, by way of contrast, have to meet the wishes of very many governments, often with divergent policy considerations in mind, and always conscious of the protection of natural sovereignty.

The Tribunal, its jurisdiction confined to the terms of these conventions, must seek to apply them to specific cases that come before it with seldom much in the way of precedent to guide it, often itself creating precedent. Thus, by way of example, in the very first trial conducted before the Tribunal, preliminary questions arose not only as to the lawfulness of the creation of the Tribunal and its primacy over national courts, but whether it had jurisdiction under international conventions in what was said to be the absence of any international conflict in Bosnia, or indeed whether the acts charged as crimes occurred in the context

of any armed conflict at all within the meaning of the Geneva Conventions. Whatever the difficulties confronting the Tribunal, their resolution will have been in itself a considerable achievement if it at all paves the way for the ultimate creation of a permanent, as distinct from *ad hoc*, international criminal court, now so long foreshadowed but so slow in realisation.

As long ago as 1953 a committee of the United Nations prepared a draft constitution for such a court but the tensions created by the Cold War led to stalemate, and only in 1993 did the International Law Commission present a complete draft statute of an International Criminal Tribunal. Work on its creation is still being actively undertaken. A Preparatory Committee on the Establishment of an International Criminal Court is currently at work under the auspices of the United Nations, and a diplomatic conference of plenipotentiaries is to be held in Rome in 1998 tasked with finalizing, and with the adoption of, an international convention for the setting up of such a Court. Unlike the two existing *ad hoc* Tribunals, for former Yugoslavia and for Rwanda, created by resolution of the Security Council, it will owe its existence to such an international convention.

If such a permanent international criminal court indeed comes into existence this will be a great step forward for the rule of law internationally as regards war crimes and such other areas of international criminal law as are placed within its jurisdiction. It will also necessarily involve to a

degree some voluntary surrender by nations who become parties to the convention of exclusive criminal jurisdiction, a matter very much at the heart of sovereignty. Perhaps this an inevitable consequence of internationalization, of progress towards what Wendell Wilkie described, now long ago, as One World.

PROPORTIONAL REPRESENTATION

DAVID LANGE

This is the story of how we in New Zealand adopted a form of proportional representation for all the wrong reasons, how we've made an extraordinary mess of it, and how we're likely to abandon it, again for all the wrong reasons.

I'm not here to sound any kind of warning about the future of proportional representation in this country. Some of what's happened in New Zealand is the result of circumstances which couldn't easily be reproduced anywhere else. And what's happened contains some lessons which might be very useful in any country where a new form of parliamentary representation has been chosen.

Much of our experience in New Zealand is relevant to the continuing debate about proportional representation in the United Kingdom, for there is much which each country would recognise in the political practice of the other.

We inherited the Westminster model of government. The greater part of our constitutional law and practice arrived with British settlers in the last century. They also brought their electoral system. From the beginning, members of the house of representatives were elected from constituencies, or electorates as they are called in New Zealand, by the simple plurality method of deciding the winner, or first past the post.

There have been some departures from British precedent which are relevant to a discussion of our electoral system. There is only one house in the New Zealand parliament, the house of representatives. There used to be an upper house in the form of a legislative council, but it ceased to play any active part in government and voted itself out of existence nearly fifty years ago. There is no legislative restraint on any government which commands a majority in the house of representatives.

Another difference, and one which has become a critical factor in New Zealand politics, is the provision which has been made for Maori representation. Maori people are a minority in what was once their own country. In the last century they were an ever-diminishing minority. To ensure that they would be represented in parliament, Maori electorates were created. There are five of them today in a parliament of 120 members. If you are qualified as an elector, and you choose to identify yourself as a person of Maori descent, you may choose to enroll on the general roll or on the Maoriroll. Most Maori voters have enrolled on the general roll, but as the number of Maori people grows, and as interest in Maori politics grows, the number opting for the Maori roll has increased. There will be six Maori seats in the next parliament. I shall come back later to the significant part these seats play in our modem politics.

Before I describe how we stumbled into proportional representation, I should tell you something of our party history. Again, there is a great deal that would be familiar to people in Britain.

For most of our modern history we have had two major political parties. The Labour party is our oldest surviving party. Like the Labour party here, it was the child of the union movement. It first became the government in 1935, and lasted in office until 1949, in which time it effectively reknitted the country's economic and social fabric. Since then, it has held office for only twelve out of 48 years, in spite of its efforts to modernise itself. Some of those efforts play a significant part in this story and I'll come back to them.

Labour's traditional great rival is called the National party. The voter who supports the Conservatives in the United Kingdom could happily support the National party in New Zealand. It had its beginnings as a farmers' party, but it soon developed a kind of dour pragmatism which successfully fed its hunger for office for the greater part of fifty years. For much of that time it was an uninspired but not unconscientious steward of the welfare state. Now that welfare states all over the world have been reinvented, it's carrying the standard of the market liberals.

We used to have a Liberal party in New Zealand, but it didn't survive the 1920s. The role of third party for much of our recent past was played, and this had some bearing on our experience of proportional representation, by the Social Credit Political League. This party used from time to time to win a seat in parliament. It would win conservative electorates on occasions when the voters wanted to record a protest against the National party government but couldn't

bring themselves to vote Labour. At one time, when there was a great deal of discontent with the government, and the Labour party was not looking good, Social Credit reached levels of support in the opinion polls which suggested that it might reach major party status.

This support inevitably reduced when a general election was held, and the votes the league received never translated into an equivalent representation in parliament. It was, understandably, an enthusiastic advocate of electoral reform. It made no headway, and may in fact have done more to discredit the cause than advance it, simply because it was such an eccentric vehicle for it.

The league was founded by a fascist sympathiser in the 1930s, and was plagued throughout its existence by the attraction it held for conspiracy theorists. Its *raison d'etre* was its wish to apply its extraordinary theories of banking and the money supply. Although its modem leaders tried to gloss over this, it was difficult for the public as a whole to take seriously a case for proportional representation when such a singular party would have been its principal beneficiary. Until the early 1980s, PR was a matter of interest only in academic circles.

It was in fact from academic circles that the impetus for change in the electoral system derived. This in tum was a response to the conduct of the country's government.

New Zealand is a small country and the checks and balances which can restrain the government of a larger country are more easily brushed aside. The National party government which took office in 1975 and held office until 1984 felt very little in the way of legal, constitutional or parliamentary restraint. Almost its first action on assuming office was to suspend part of the law of the land. It did this by issuing a press statement saying that the law would not be enforced, and that when parliament got around to sitting, the law would be repealed. Because the government's action was popular, its critics made little headway and its officials did as they were instructed.

The National party was led by Robert Muldoon. He was a populist politician, a belligerent, aggressive figure. Liberals and academics were among his favourite targets, along with people who didn't like sporting contact with the apartheid regime in South Africa. When he became prime minister in 1975 he also held the finance portfolio, which gave him a remarkable and unhealthy concentration of power, which he cheerfully used. His cabinet was docile. He dominated his parliamentary party by sheer force of personality.

His frequent abuses of power had a number of far-reaching effects, one of which was to give the issue of constitutional reform huge impetus among the academic community. Geoffrey Palmer, who had been a professor of law and became deputy prime minister and later, briefly, prime minister in the Labour government, was among its leading

exponents. The aim was to find some way of ensuring that raw political power was never again so unrestrainedly wielded.

There was agitation for a bill of rights. One stream of thought saw some possible restraint in the treaty of Waitangi, an agreement signed in 1840 between representatives of the British crown and many chiefs of the Maori people, in which the Maori people recognised the British presence in New Zealand in exchange for certain guarantees. The continuing effort to elevate the treaty into a founding constitutional document is a story in itself. What also happened was a growth in support among the academic community for some form of proportional representation which would enable parliament to act as a restraint on the power of the executive branch of government. The argument gained ground that the 'winner take all' electoral system produced an adversary form of politics in which reason and restraint were too often the casualties.

Muldoon's abuses were made possible by the willingness of the National party in parliament to vote as one in support of their leader, a willingness no doubt encouraged by the knowledge that you didn't have a chance of a continuing career in parliament, let alone the chance of office, unless you were wearing the label of one of the two major parties. Party discipline was firmly exercised. Crossing the floor was unusual. Towards the end of National's time in office, there were some defections from the party line among its

parliamentarians, but these were exceptional cases, and one of them was in fact used by the National government as grounds for its ca1ling an early general election in 1984.

The National party ac1ually won a smaller share of the popular vote at the general elections of 1978 and 198l than did the Labour party, but still won more seats in the house of representatives because of the feature of the first past the post system which allowed Labour to pile up huge majorities in urban electorates while just failing to win critical marginal electorates in the provinces.

Few of the Labour party's leadership, let it be said, were moved by this state of affairs into support for proportional representation. We all knew that one day the swing of the pendulum would just as likely favour us. But there was a strongly-held view among many of Labour's members that proportional representation should be considered as a means of preventing future abuses. The party's manifesto in 1984 included a statement that it would order a royal commission to inquire into the electoral system.

The royal commission was asked to evaluate the existing electoral system in terms of the fairness with which it distributed seats between parties; the effectiveness with which it represented minority groups, Maori people, and constituents; its capacity to encourage participation in the political process; the effectiveness of government, parliament and political parties; and the legitimacy of the political system.

The royal commission considered all of this and recommended that the country adopt a form of representation closely akin to the model used in West Germany. This is a mixed member proportional or MMP system. In the New Zealand version, sixty members of parliament were to be directly elected by the first past the post method in single member electorates, and a further sixty were to be chosen from party lists in such a way that every contending party's parliamentary representation matched its share of the popular vote. To qualify for seats in proportion to its list vote, a party must either win an electorate seat or must poll higher than a threshold of four per cent in the list vote.

The royal commission chose this scheme because it encouraged a wider range of choice for the voter and ensured fairness of outcome in terms of parliamentary representation. It also preserved the link between representative and elector which is characteristic of first past the post and is often said to be one of its strengths. In New Zealand terms, it was a scheme which retained some elements of past electoral practice and offered the possibility of an easy transition.

Most of the parliamentary Labour party were unhappy with the royal commission's findings. Some of the reason for this is obvious. Some of it was the product of the view that an election is rather more than a means of choosing a house of representatives which reflects the opinions of the electorate. It is a means of choosing a government and, in

this view, first past the post is a simple and effective method of electing a government with the capacity to be decisive.

Once the ogres of the recent political past had been despatched, there wasn't much popular support for, or even interest in, the royal commission's findings. They would doubtless have been left on the shelf with the findings of any number of inquiries had it not been for the troubles which overtook the Labour government, and some accidents of politics.

I have to tell you that I have a wonderful feeling of *déjà vue* in Great Britain at this time. In 1984 in New Zealand we had a new Labour government. We had a comfortable majority. We were fresh from many years in opposition. The party had re-made itself. We were young. I had black hair when I became prime minister. We were great enthusiasts for any cause we adopted. We wanted to modernise. We wanted to free our country from the oppressive interventions of government, and free individuals from the restraints imposed by custom and tradition. We were, by the standards of the old Labour party, well to the right of the political spectrum, but most of us had come of age as politicians when the ground was shifting under old political values and allegiances, and left and right were labels with little meaning.

We were in our first term of office, hugely popular, in spite of the costs of the programme of economic restructuring

and market liberalisation we carried through. At the general election in 1987 we increased our majority, something which was almost unheard of in New Zealand. At the end of our second term, it was hard to find anyone who'd admit to voting for us. I won't trouble you with the detail of what happened. Essentially, a great divide opened up in the government about the pace of economic reform and the manner of economic management. We spent most of our second term arguing publicly about economic policy, changing our personnel according to whichever faction was in the ascendancy. You can't imagine anything less likely to inspire public confidence, and by 1990 the Labour government was doomed to defeat.

It was this sudden decline in Labour's fortunes which in the end gave proportional representation an unexpected reprieve.

PR was a minor issue at the general election of 1987, but the royal commission's report was fresh enough in the public memory for the issue to be raised on a television programme during the election campaign. I knew it was going to be raised, but it was a topic to which I'd given hardly any attention and I relied on my briefing notes to tell me the party's position. Somewhat to my surprise the notes said that we were pledged to hold a referendum which would allow the public to decide on the electoral system. I repeated this. I found out when I got back to the office that a mistake had been made in transcribing the brief, and

whatever it was on which we were promising a referendum, it certainly wasn't the electoral system.

This left me with an unpleasant choice. I could confess to the mistake, and look uninformed and incompetent. Or l could say nothing, and hope that some way could be found after the election in which l might avoid looking uninformed and incompetent. l chose the latter. There was debate in the parlian1entary Labour party afterwards as to whether we should hold the referendum or not, but there was a substantial majority against it, and the referendum never took place while Labour was in office.

This of course was a gift to Labour's political opponents. The National party promised that if it won the general election of 1990, it would hold a referendum on the electoral system. The majority of the National party were perhaps even less inclined towards proportional representation than were the majority of the Labour party, but the promise offered National an immediate political advantage, and doubtless in that spirit was made.

What National also promised, or seemed to promise, in l990 was to delay or reverse many of the economic reforms begun by the Labour government. By this time, Labour's programme of market liberalisation and privatisation was enormously unpopular, not only because the Labour party itself was divided about it, but because its successes seemed to weigh less than its failures. But when National won the election, which it did by an overwhelming

majority, it took up where Labour left off, extending market principles into labour law and the social services. Government in New Zealand has devolved to a point where it hardly exists. It's a spectator when it comes to the economy and an observer of what happens in the public sector. Its indifference to the public is rewarded with the contempt of the public.

The referendum on the electoral system was held in a climate of extraordinary public disillusionment with politics and considerable alienation from the political process.

The referendum was held in two stages. In the first stage, voters were invited to choose among the existing first past the post model, the MMP model, the single transferable vote system, a form of preferential voting, and a hybrid system which was mostly first past the post with a small proportional element. The idea was that, if the voters chose a system other than first past the post, its details would be fleshed out in legislative form and there would then be a run-off between first past the post and the new system.

The voters gave MMP a plurality. It then fell to parliament, most of whose members were averse to any alteration in the electoral system, to design the new one.

There were extensive public hearings, held amid a great deal of public controversy. For the most part parliamentarians adopted the model of MMP supported by the royal commission on the electoral system. There was

one exception. The royal commission recommended that special provision for Maori representation not be made in the new system and that the Maori seats be abolished. Its reasoning was that MMP would allow parties which represented Maori interests to win seats in parliament. Many Maori people did not share the royal commission's optimism. After consultation, it was agreed that the Maori seats should be kept, at least until MMP had had the chance to work in practice. The Maori seats, of which there are now five, were added to the number of electorate seats, meaning that there are 65 electorate seats and 55 list seats in our parliament.

The issue most fiercely debated was the number of members of the house of representatives. At the time of the referendum there were 99 members in the house. The royal commission was adamant that MMP could not work effectively with less than 120 members, and said that it would not support the adoption of MMP with any lesser number. The proposed increase in the number of members of parliament provoked public outrage, and demands that the number be fixed at a hundred. Suspicion rapidly grew among the public that parliamentarians were proposing 120 members as a means of reducing support for the MMP model. In spite of this, 120 was the number chosen.

The referendum was held at the time of the general election in 1993, and MMP won a narrow victory over first past the post. The new electoral law came into force. Electoral boundaries were redrawn. Parties drew up their lists. At

the general election in 1996 we all had two votes, one for a member of parliament to represent our electorate, and one for the party of our choice. The electorate members took their seats in parliament, and were joined by members taken from party lists to make each party's representatives up to a number which matched its share of the popular vote.

Very few who voted for MMP in 1993 did so out of enthusiasm for proportional representation. Most of its supporters voted for MMP because they wanted to punish politicians who were the beneficiaries of first past the post. Having voted in the usual way in 1990 to change the government, and having found that they got more of the same, or worse, it wasn't surprising that the voters looked for another way of getting what they wanted.

The general public were encouraged in this view both by the supporters and opponents of MMP. Among MMP's most prominent opponents was an organisation which represented the most powerful of the country's leading businessmen. They supported first past the post because in their opinion it offered stable and decisive government. But it wasn't hard to sense that their opinion was coloured by a fear that MMP might lead to the election of a parliament which was not inclined to current economic orthodoxy.

The supporters of MMP gave equal encouragement to the hope that a change in electoral system might lead to a significant change in economic and social policy. Many of

its most prominent public advocates came from the left of politics and were happy to let first past the post be damned by association with unpopular government.

A number of other assertions made by supporters of MMP gained ground. Chief among these was the argument that proportional representation would alter the political culture. It seemed unlikely that any single party would ever get a majority of the seats in parliament on its own account. To form a government, parties would have to consult and co-operate. The worth of the parliamentary bully would be discounted, and the value of the quiet and constructive would appreciate. The hallmark of MMP would be moderation, in parliament and government.

Opinion surveys showed no great understanding of the working of MMP among the general public. But there was a strong conviction that MMP must lead to a change in government and that the change must be for the better. I doubt if more than a handful of those who voted for it did so out of an interest in fairness of representation. MMP came to New Zealand bearing an enormous burden of public expectation.

I was a declared opponent of proportional representation. My first, instinctive, objection to it was the reason given by most politicians who have done well out of first past the post. I wanted to know the result of the general election on election night, and not have to negotiate my way into government. I didn't go into politics to be kind to members

of other political parties, or be hamstrung by an inability to command a majority in parliament.

My other reasons for opposing MMP were more immediately attributable to New Zealand's political circumstances. Having done the political arithmetic, I thought it unlikely that the MMP system would actually produce a parliamentary majority in favour of any serious alteration in the direction of economic policy. It thus seemed doubly dangerous that many people were supporting MMP with just that goal in mind. In a democracy like ours, you can only punish politicians by electing other politicians. There was no obvious answer if MMP was tried and didn't work.

I think it must always be difficult for politicians who have established interests in one form of electoral system to make the change to a new one. The New Zealand parliament after our first MMP election wasn't a new assembly. In terms of its membership, it was largely the old assembly, reconstituted, with the balance of power inside it forever altered. To form a government, old enmities would have to be put aside and concessions made where concession once was unthinkable. The thought of it was certainly too much for me and I happily retired from active politics before I ever had to sit in an MMP parliament.

I should at this point describe the political landscape as it was just before our first MMP election in 1996.

Well before the election, our two party structure began to fragment. Labour and National remain today the two major parties, but they have been joined by several other parties.

A disaffected member of the parliamentary Labour party formed the New Labour party in 1988 and was returned to parliament as its sole representative in the general election of 1990. His party is not to be confused with New Labour in this country. It was at the start the embodiment of the values of a very much older Labour party. In time it formed a partnership with the Greens, who never got much traction under first past the post; Mana Motuhake, a Maori party which did not get a representative into parliament until it teamed up with New Labour; a group which called itself the Liberals and consisted almost entirely of a couple of refugees from the parliamentary National party; and the Democrats, who were the last remnants of the Social Credit Political League. Under the name of the Alliance, this grouping has established a solid base on the left of politics, with thirteen seats in the MMP parliament, although its principals, New Labour and the Greens, are at times uncomfortable companions.

New Labour was not the only offspring of the Labour party. Many attempts were made to form the centre party which was thought likely to play a critical part in MMP politics. Several Labour MPs joined with some National MPs to form the United party, declaring that its role would be to moderate the policies of whichever of the major parties formed a government with it. This failed to inspire, and

United had only one seat after the 1996 election, an electorate seat in which the National party, on the lookout for potential allies, declined to stand a candidate.

A party called ACT, the Association of Consumers and Taxpayers, was formed by Labour MPs who had either retired or been defeated in 1990. These were the ideologues who did so much to bring Labour to electoral ruin. It's a party devoted to small government, a flat rate of income tax and the privatisation of the few assets the public sector has left. It's hard to imagine that anyone could take it seriously, but there it is. MMP gave it eight seats in parliament.

The critical element in the mix came from the National party, and was the creation of a politician called Winston Peters. His mother is from Scotland. His father was a Maori, but Peters was never in any accepted sense a Maori politician. He joined the National party, and rose rapidlyin its ranks. He was a populist politician after the Muldoon model, although far more charming than Muldoon ever was, and a fierce public critic of the economic policy of his own party. For this, and for his scarcely-concealed ambition to win the National party leadership, he was dismissed from the cabinet. He set up his own political party, which he called New Zealand First.

Peters enjoyed enormous personal popularity, largely on the strength of his stated opposition to National's economic policy, but also on the back of populist causes like his

opposition to immigration from Asia. His new party gained support from two groups in particular. The first were the conservative elderly, who were alienated from both major political parties. The second group of his supporters were found among Maori people, who traditionally were supporters of the Labour party. Peters, as I said, has never set out to encourage a Maori following, but perhaps because he was a successful politician and a person of Maori descent, many Maori gave him their support. New Zealand First was thought likely to get fifteen or perhaps even twenty per cent of the vote in the 1996 election, and thus be in a position of real power in the new parliament.

Nobody who heard him in the election campaign doubted that Peters intended to use that power to defeat the National party. He told us on the evening before our votes were cast that a vote for New Zealand First was the only sure way of defeating the National party. On election night, when the voters had given him the power to throw National from office, he declined to exercise it.

Some of what happened can be attributed to New Zealand's lack of experience with proportional representation. The election campaign was marked by confusion.

The Labour party and the Alliance, two apparently obvious coalition partners, were unable to reach an agreement which would enable them to run a campaign in concert. Labour declared that it would decide on its coalition partners only when it knew the balance of seats in

parliament, and in the meantime would campaign against every other party, the Alliance included. The Alliance announced that it would not go into coalition with any other party unless it had reached an agreement with that party before the election. I think that the Alliance was right in principle, but in practice its stand made it seem unwilling to take any serious part in government, and it lost votes as a result. National, ever pragmatic, indicated willingness to go into coalition with any other party, the Alliance excluded. New Zealand First left the public with the clear impression that it would ally itself with the Labour party to defeat National, although it did not spell this out.

The process of forming a government was thereby turned into a kind of electoral lottery. If MMP is to work as it should, it seems plain enough that parties, as well as declaring what they stand for, must declare who they stand with. There must be broad agreement and understanding among the parties about the limits of their support for each other. These limits must be known to everybody, including the voting public.

Potential coalition partners, or even parties which are more loosely committed to supporting each other, or have simply agreed not to oppose each other, should not fight an election campaign armed with conflicting goals and non-negotiable bottom lines. In a stable system, the only non--negotiable demands a party issues are demands it knows are going to be met.

The detail of the formation of a coalition government, or the legislative programme of a minority government, may be a matter for negotiation, and the negotiation may take some considerable time, but it should never be a matter of concern. The broad direction the government will be taking should be plain enough on election night.

This, sadly, was not our experience in New Zealand.

What happened was in fact extraordinary. New Zealand First, which got thirteen per cent of the vote on the strength of its promise to defeat the National party government, conducted an auction, in which it invited Labour and National, the two major parties in parliament, to bid for its support. The party which bid the most would form a government in coalition with New Zealand First. At stake were places in the cabinet, positions in the government, and matters of policy.

This bizarre procedure, which lasted for six weeks while the negotiations continued, was earnestly reported by our news media as if it were some form of legitimate process. Again, I can only attribute this to our general unfamiliarity with the new electoral model, and perhaps to our distance from working models of PR government. Such a breach of good faith as was committed by New Zealand First would hardly have gone unremarked in the old model, where everybody knew the rules and could tell when they were being broken.

I think too that there is some explanation for what happened in the sheer novelty of New Zealand First as a political party. It was almost entirely the creation, and the vehicle, of its leader. Members of older-established political parties are used enough to differences with their parliamentary leadership, and may from time to time feel wholly let down by their parliamentary leadership, but it's hard to imagine that the membership of an established party would react as passively to a reversal on election night as did the supporters of New Zealand First.

All but two of of the party's parliamentarians were new to parliament. Its leader had a long history in the National party, and its deputy leader won a Maori seat from the Labour party at the general election of 1993. In 1996 the party won all five Maori seats. The rest of its members of parliament were a ragbag of former activists from the two major parties. Right from the start there were plainly two wings in New Zealand First which clearly reflected the divided nature of its vote. For whatever reason, these newcomers did exactly as their leader told them.

Their leader told the rest of us, after six weeks of bargaining, that he intended to form a coalition government with the National party. There was more than a touch of sophistry in his justification of his choice. National could not govern without the support of New Zealand First, and it had therefore been defeated by New Zealand First.

Peters became deputy prime minister, but more importantly

he took responsibility for the finance portfolio in cabinet. Several of his colleagues became ministers, new as they were to parliament. A number of policy initiatives were announced. On examination, these proved in no way to modify the economic policy against which Peters had campaigned so vigorously. They amounted to a commitment to spend more in areas like health and education. We learnt only later that increased spending in these areas will be offset by reductions elsewhere.

There are several possible explanations for New Zealand First's reversal, most of them attributable to Peters' personality and ambitions, but the critical point is this. In three general elections from 1990 a majority of the people have voted to change the government, and have gone so far as to change the electoral system in order to make a difference in their government. Three times they've had their choice thrown back in their faces. We have a crisis in government in New Zealand. It wasn't made by MMP, although MMP's novelty and the uncertainty our unfamiliarity with it has created have contributed to what happened. It's unfortunate for supporters of systems of proportional representation that the MMP model is shouldering the blame for a crisis of confidence which is certainly not of its making.

Let me look at MMP in practice.

There are six parties represented in the parliament, although one has only one member. The old two party system has

gone for good. Parliament is more representative than it was. One of the arguments in favour of MMP was that the list system would encourage parties to select a wider range of candidates in winnable places. This has certainly happened. The number of Maori members has increased to a point where it is getting close to the proportion of Maori people in the population. There is a small number of representatives of ethnic minorities. The number of women has more than doubled, although the figure is still some way short of the half way mark.

Another argument put forward in support of MMP was that list membership would allow parties to select candidates who were not political activists but who had personal qualities which would enable them to make a contribution in parliament. This has not happened. The rush among party activists for winnable places was far too fast for any eminent outsider to have a chance of selection.

Opponents of MMP used to suggest that the reduction in the number of electorate members would weaken the personal link between voter and representative. As far as I can tell, this has not happened, simply because list members have taken it on themselves to behave like electorate members. There was to begin with a great deal of uncertainty about the role of list members, which gave rise to a feeling, both among the general public and among members themselves, that you weren't a real member of parliament unless you had an electorate seat. This impression will doubtless fade when the novelty of list

members has worn off, but in the meantime most list members are compensating by identifying themselves closely with a particular area, opening up an office and generally doing the constituency work of an electorate member, often in competition with an electorate member. This phenomenon has actually made members of parliament more rather than less accessible.

In parliament itself, for all the new faces, little has altered. The standard of behaviour, measured in terms of cat-calling, abuse and general disorder, has if anything fallen. There is no sign at all of the moderation in debate or in conduct which was promised by many of the supporters of MMP, and certainly no sign of the consensual deliberative approach which was said by some to be the hallmark of governments formed from a parliament elected on a proportional basis.

What has happened is that the old political culture has reasserted itself. There are six parties, but they have essentially formed themselves into two opposing blocs. The government, having got its majority, behaves exactly like a government elected under the first past the post model. Its coalition partner, being small and inexperienced, and now discredited, has had no modifying effect whatsoever on the National party's conduct. It does no more than make up the numbers.

The history of New Zealand First since the election has been a chapter of accidents. There have been accusations

of public money squandered, squabbles over the spoils of office and claims of arrogance and indifference to the voting public. The party is certainly doomed as a political force in its present form. Polling shows that its popular support has fallen to below five per cent.

The National party is doing no better out of its bargain. Its partner's unpopularity is reflected in its own failing ratings. It is desperate to escape from its association with New Zealand First, yet equally anxious to stay in government. The government's dilemma has become its overriding preoccupation.

Public support for MMP, as you might imagine, has fallen to the point where it would convincingly be defeated if another referendum were held. Some of this fall was inevitable. Public expectations of MMP were so great that whatever happened they could not possibly be met, and what actually happened amounted to a PR enthusiast's nightmare.

MMP is due for review early in the next decade, and I think there is a strong chance that the country will go back to a first past the post form of electoral system. I don't say this with any great enthusiasm, for all that I was an opponent of MMP. Having chosen MMP for the wrong reasons, we're likely to abandon it for the wrong reasons.

It comes back to the question of Maori representation in parliament. The New Zealand First party, as I said, won all

the Maori seats, and there is some chance that in spite of its difficulties it may retain some or all of those seats. There has been talk of the emergence of a separate Maori party, and New Zealand First's Maori members may provide the platform for such a party. Several Maori who are members of parliament on the strength of a place on the list of other parties have spoken sympathetically of the potential of a Maori party. It's impossible to predict exactly what will happen, but it is inevitable that a distinctively Maori power bloc will emerge in the parliament and that this bloc will be hugely influential in the formation of future governments.

This has caused great unease among the majority of the population. One of the tragedies of our venture into proportional representation is that almost till of its difficulties have been associated with Maori members of parliament. The leader of New Zealand First is as much of Scots descent as he is of Maori descent, and has never identified himself with Maori causes, but in a culture like ours, nobody attributes his failings to his being a Scotsman. The greatest of the scandals surrounding New Zealand First involved a Maori member. A member of the Alliance, who was elected to parliament on the strength of the Alliance list, defected from the camp, in defiance of the concept of proportionality of representation. She was a Maori person who declared that she acted as she did in order to advance Maori interests. She gave her proxy vote to a Maori member of the Labour party who has declared that she is staying with Labour only until the appearance of a more suitable vehicle.

This is troubling. In a country in which the Maori population is growing rapidly, certainly much faster than the majority population, the majority will have to learn to come to terms with Maori aspiration, whatever form it takes and however much it may be at odds with the majority culture. The lesson will have to be learnt whether we have an MMP electoral system or a first past the post electoral system. But I think that MMP *will* be a casualty of the learning process. It hasn't done what the majority of the public expected it to do, and now it's started to frighten them.

Nothing which has happened in New Zealand is in any sense a precedent for the adoption of proportional representation in any other assembly. The crisis in our politics goes far deeper than the way we choose our members of parliament, and can't be resolved by simple changes in the electoral system. I don't share the view of some of the advocates of proportional representation that a change in the electoral system will change the political culture. It seems to me that the political culture is a product of society as a whole, and what happens in parliament will reflect that, rather than the characteristics of the voting system. We don't have good government in New Zealand with MMP, but we've had just as bad with first past the post. I'm certain that proportional representation can lead to good decisive government, just as much as first past the post can lead to good, decisive government. It's a pity that we won't get the chance to find out.

THE 'COSTS' OF INTERNATIONAL PEACEKEEPING

MALCOLM RIFKIND

Introduction

I am pleased to have the opportunity to speak about UN peacekeeping operations, the lessons we have learnt and my perspective of future prospects.

To put this in context, perhaps I can start by reminding you that there have been more UN peacekeeping operations launched in the last eight or so years than in the previous forty years. And this has not just been a growth in numbers; the complexity too has increased. In the UN's first forty years, the number of troops involved in UN operations peaked at a little over 20,000; and in practice was rarely more than half of that. Towards the end of 1994 over 75,000 troops were deployed, from 76 nations, serving in 16 different operations. The UN now has larger forces carrying out tasks ranging from humanitarian aid and assisting refugees, to public administration and conducting elections, in addition to more traditional peacekeeping.

In fact, we have a paradox where the end of the Cold War has been both cause and effect. International affairs are no longer conducted in terms of confrontation between

Superpower Blocks. The threat of conflict that hung over most of the last half-century has been removed. The UN is now free to take the more active role in the international community which its founders envisaged.

But the changes that have swept across the world have a grimmer side. The end of the Cold War lifted the lid on a range of suppressed rivalries, some of extraordinary bitterness. This has been compounded by the advanced and powerful weapons which are now widely available. This potential for instability transcends national disputes and national frontiers to become a problem for us all.

Lessons of Peacekeeping

British expertise in the field of peacekeeping is now both widely acknowledged and respected. Our experience has given us a sharper insight into the nature of these operations, and we have learnt from experience. In fact the UN engages in a number of quite separate and different operations including peacekeeping, peacemaking and, even, peace enforcement, collectively known as peace support operations. All our experience leads me to the view that there are two principal categories. The first, peace*keeping*, comprises operations *with the consent of the parties* in support of efforts to achieve, or maintain, peace. The second, peace *enforcement*, encompasses operations to restore peace between parties who *may not consent* to intervention. The former are usually predicated on the

existence of a ceasefire, and a longer-term political process which peacekeeping can assist.

But I should not pretend that it is always possible neatly to divide operations into these two categories. Reality is usually much harder to categorise. Tidy definitions which are useful for military planning can mean very different things for the forces deployed on the ground, and have different implications for the forces involved. There is a world of difference between patrolling the Green Line in Cyprus and the UN's operations in Bosnia, although both fall under the same broad label of peacekeeping. In Bosnia, the level of violence was very much higher. Indeed we had to deploy sophisticated armoured vehicles to support humanitarian relief operations, and there is general acceptance of the principle that our troops there may have needed to open fire with quite heavy weapons if that became necessary to defend themselves. In Bosnia, we used cannon and heavy machine guns as well as small arms fire; the Danes have used main battle tanks.

It is, therefore, obvious that a spectrum of responses to potential or actual crises is clearly needed, starting with preventative diplomacy and running through humanitarian operations, traditional peacekeeping - i.e. operations to separate and monitor opposing groups after an agreed ceasefire, to large scale involvement by the international community to impose a settlement to a conflict. In the real world, these levels of response may, of course, overlap, e.g. a prophylactic military deployment to stabilise an area

while preventative diplomacy is still underway, or, as in Bosnia, both humanitarian and peacekeeping operations.

The crucial distinction, however, is whether those involved in operations anywhere along this spectrum retain impartiality. In essence, this boils down to whether they are there with the consent of all the parties involved, or only some - or even none. Consent in this context does not, of course, mean that forces deployed with the consent of all sides will be free of accusations of bias - as we have seen in Bosnia - or that there may not be occasions when they need to defend themselves. There may well be attempts to manipulate them and their neutrality may not always be respected. But there is at least acceptance in principle that they are not one of the parties to the conflict.

Without the consent of the parties, UN operations become substantially more complicated. The forces involved will not be regarded by all parties as impartial and, therefore, it will be almost impossible for them to revert to a neutral role at a later stage. They also lose the relative protection that neutrality provides. They will, therefore, probably have to use force, not merely in self defence but to impose a solution. They therefore risk becoming a party to the conflict they have been deployed to resolve.

These problems are exacerbated in civil wars. It is very hard for either the UN itself or the forces on the ground to determine who is victim and who aggressor. In these circumstances, the potential for very long and, ultimately,

inconclusive involvement by the UN grows. It also raises difficult questions of the rationale in international law for action by the UN, which are not present in conflicts between states.

I am not, in highlighting these difficulties, suggesting that we should never be involved in operations that do not have the consent ·of all parties. We should not, however, underestimate their difficulties and complexities. I believe, therefore, that operations in which the UN remains impartial should be the norm.

Defining the Task

That said, the nature of an operation can - and often does - change as a situation develops. Bosnia started as a humanitarian operation, increasingly took on a peacekeeping flavour, and there was pressure from many sources for the UN to move to peace enforcement.

This raises the very difficult question of how to define, from the outset, the nature of each task and, therefore, the forces that will be required for its successful completion. The forces that are required for one purpose may simply not be fit for another. We therefore seek a clear mandate, acceptable to all troop contributors, which spells out what they are there to do and the limits on the action that they can take before planning is finalised. We must recognise that, however clear the initial mandate, it will not be

immune from political pressures created by changes in the circumstances on the ground or, indeed, from public expectations that this may be neither well-informed nor even rational. In the jargon of the Ministry of Defence, this is known as "mission creep".

The next stage in defining the task is to ensure that the mandate is achievable. This may well influence the scope of the task undertaken; as American forces found in Haiti, explaining the limits of an operation brings its own difficulties. If, however, we do not agree an achievable mandate, there is a significant risk that the operation will not merely fail, but quite possibly that it will make matters worse and discredit the organisation sponsoring it. In this context, events in Mogadishu presented some bitter lessons. There is general concern in the UN that its failure in Somalia undermined its credibility as an organisation; and that this may deter nations from contributing to future operations.

The process of defining a mandate may, therefore, affect the ability of the UN rapidly to deploy forces on an operation. But we ignore it at our peril. Similarly, the need to establish clear objectives against which to measure the success of the operation, and where possible to set a firm end date, is also vital. This, as in Cambodia, may take the form of a time limit on the operation as a whole, or on the duration of individual nations' contributions. The prospect of an open-ended deployment - of the type we have become accustomed to in Cyprus - is a deterrent to potential troop

contributors. It is much better to establish from the outset the principle of rotation between troop contributors so that individual nations can be confident of a finite commitment.

As with many other aspects of UN operations, enunciating this principle is rather easier than putting it into practice! However clearly we may define the objectives of an operation and the timetable for achieving them, it can be very difficult to pull out if the underlying problem has not been solved. No matter how much hard realism points to cutting our losses, political factors and public opinion frequently pull in the opposite direction.

Public Opinion

This brings me to the role which public opinion can play in determining both whether a UN operation is mounted and, in particular, whether individual nations contribute. In political terms Governments can face uncomfortable choices. They have a responsibility to satisfy themselves that military involvement is an appropriate response to a crisis; and that forces, once deployed, have an acceptable prospect of succeeding in accomplishing the tasks they have been set. It may, therefore, be necessary to decide in some circumstances against military involvement. But doing this can be extremely difficult when domestic, and international, opinion is strongly of the view that "something must be done".

Public opinion can create a huge surge of support for involvement in particular operations, and the media is very influential in shaping this opinion. For understandable reasons, the media focuses on bad news. In complex conflicts, it is also difficult within the constraints in which journalists operate to portray a balanced picture which properly represents all the factors in a conflict. The public see harrowing scenes of genuine need and react equally genuinely with demands for action. The problem is that it is not always so easy to identify what that action should be. As in the Gulf conflict, Western publics have seen the remarkable power and sophistication of the equipment operated by their armed forces. What they may not readily appreciate is that, in peacekeeping, some of this capability may be neither appropriate nor useable within the mandate for the operation or without destroying what we are seeking to preserve. In peacekeeping operations - as opposed to peace enforcement - the use of force is strictly limited to the minimum required for self defence. The forces are not deployed to influence the course of the conflict itself. That is why, in Bosnia for instance, there are limits on the use of overwhelming airpower. This can be difficult for public opinion to accept.

I also want to make one more point before I leave this section on public opinion. That is that the public desire that "something must be done" may not be sustained if involvement in a bitter conflict in a country in which no vital national interests are at stake results in casualties. The clamour for action can turn, almost overnight, into an

equally vigorous clamour to "bring our boys home". And the Government cannot afford to ignore the need for public support for British involvement in UN operations.

UN Peacekeeping Capabilities

I have tried to set out the increasingly complicated background against which the UN has to operate. Given the very rapid growth of UN operations, its resources have inevitably been stretched; and, post the Cold War, there are likely to be more and more occasions when the UN is called upon to act. It is, therefore, examining how it can enhance its capacity to plan and launch peacekeeping operations. In 1992, the Secretary General published his report "An Agenda for Peace", which identified a number of areas where UN capabilities could be increased. The UK welcomed this report and continues to take an active part in the debate it fostered, particularly to identify practical measures which will bolster the UN's capabilities. We recognise the need for the UN to improve its command, control, and planning abilities. If it is to be able to react flexibly to swiftly changing circumstances, the best approach would be to create a General Staff, comprising civilian and military, who could provide the necessary core for strategic planning for peacekeeping operations. It would principally work in New York to an agreed professional doctrine, but it might also provide personnel to deploy in the early stages of operations to put the plans developed into operation. Such a Staff would augment the

existing planning and operations cell, and provide a much needed injection of capacity, expertise, and experience.

In my view, this should be allied to clearer, unified command and control arrangements. The UN Headquarters should concentrate on strategic planning, for which a General Staff would give a capability, and on the political direction to the UN command in the field. The latter's role is to undertake the detailed operational planning and assign individual tasks to the forces in the field. This is, however, in practice a difficult area where political sensitivities are complicated by individual nations' understandable desire to have a say in what tasks their contingents are asked to undertake.

Force Contributors

In addition to the changes in the UN's management and organisation which I have described, the upsurge in the level of peacekeeping also raises the question of where the forces can be found. There have been suggestions that the UN should have a standing capability or forces earmarked for peacekeeping. Circumstances will, of course, vary from country to country but the Government's perception is that earmarking specific troops is not the answer to the UN's problems. It is extremely difficult to forecast in advance exactly what capabilities will be needed for each operation or which nations will be acceptable; this leads to a high risk of a mismatch between the forces earmarked for the UN

and its actual needs. My preference is to ensure that the UN has a clear view of the capabilities we have to offer, and to consider our contribution on a case-by-case basis.

A standing UN force also has problems. Few Governments are likely to give the UN *carte blanche* over the deployment of their forces. A directly raised force would have to face the difficulty of ensuring that it had - and maintained - the wide, and growing, range of capabilities likely to be required now - and in the future - for peacekeeping operations, and of keeping personnel current in a full spectrum of skills and doctrines. Current operations also require highly trained troops who have the discipline and confidence to avoid the pitfalls of over-reaction in the face of provocation. Our belief is that the best starting point for this is well-trained personnel who have the experience of general military service with their own national armed forces.

Balancing Commitments

I now want to tum to the question of the circumstances in which British personnel should be involved. In taking such a decision, we need to balance commitments and resources. Like most nations, we have considerable freedom to decide the number and type of forces we wish to commit. But although choice brings freedom, it also brings responsibility. As a permanent member of the Security Council, we wish to play a significant part, and are doing

so. But we cannot do everything. As Douglas Hurd said on a previous occasion, there are times when we will have to say no. We need, therefore, to satisfy ourselves first that military involvement is the most appropriate response to a problem; and, secondly, to balance our involvement against other commitments, available resources, and our foreign policy objectives.

The Future Prospects

I should now like to tum to the future. I believe there is every likelihood of a continuing demand for peacekeeping, and I hope that the UN will be able to continue the process it has begun of enhancing its own capabilities. I would like to see early progress in the further development of the UN planning mechanism into a peacekeeping General Staff to plan future operations and establish a common UN peacekeeping doctrine. Continued work to improve command and control arrangements are also important, but I recognise this is a complicated issue and is not likely to be resolved quickly.

These improvements are vital because the UN is the only truly world-wide organisation which has the authority to legitimise military action by the international community, and significant experience and expertise in the field of peacekeeping. It must, therefore, have primacy in this area.

I am not, however, arguing that regional organisations do

not have a useful role to play under a UN Mandate. The Franco-British initiative on African peacekeeping is a good example of this. We need to build on existing mechanisms for early warning and the traditions of preventative diplomacy, to help African States enhance their ability to deploy forces on peacekeeping operations. Britain proposed that peacekeeping "skills centres" could be established in African staff colleges; that logistic bases could be established under UN control to store equipment; and that other countries could assist through training and short-term logistics advisory teams.

NATO, the Organisation for Security and Cooperation in Europe, the European Union and Western European Union, can also contribute in their different ways to identifying and forestalling conflict; and can conduct peacekeeping operations where necessary. A great deal of work is being done to adapt these organisations to these new challenges. NATO resources are being used in Bosnia. While Bosnia is the first theatre in which NATO forces have been used for UN peacekeeping operations, I do not believe that it will be the last. NATO and WEU are already learning from the problems which deployment in and around former Yugoslavia created.

Finally, I want to tum to a very important development in the way in which the British Services might contribute to UN operations. I spoke earlier about the perennial problems of getting forces on the ground without delay at the start of an operation. Nations such as the United

Kingdom whose armed forces have a well-developed, rapid deployment capability naturally are the first ones to which the UN look in these circumstances. But there is a natural reluctance to enter into an open-ended commitment. We therefore need to look at whether short-term deployments to hold the ring while an operation gets underway, and then hand over to contingents from other nations, should be the norm. Our involvement in Rwanda was time limited in this way and the deployment to Angola followed the same pattern.

Peroration

Since the end of the Cold War, the theory and practice of UN peacekeeping has developed substantially; and it is continuing to develop. I can see no slackening in the demand for the UN's good offices, and the UK will continue to be a major participant in its operations. The skills and professionalism of British Service personnel deployed on UN operations are widely and justly acknowledged. I pay tribute to this; they have had a distinguished role in the UN's history.

We shall, I am sure, continue to discharge our responsibility as a permanent member of the Security Council. We now need to build on the progress that has been made in both the theory and practice of UN operations and continue to work to enhance the UN's capacity to plan and mount them.

I cannot pretend that it will always be possible to predict where crises will erupt; but I can say with certainty that they will. The United Kingdom, and the British armed forces in particular, will continue to play its part as a responsible member of the Security Council in the eternal endeavour for international peace and stability.

Institute Publications

Occasional Papers:

1. *Europe Redefined*, Richard McAllister, 1991. ISBN 0 9514854 1 5

2. *Europe: Ways Forward*, Mark Russell & Richard McAllister, 1992. ISBN 0 9514854 2 3

3. *Constitutions*, Ninian Stephen & *Indigenous Peoples*, Paul Reeves, 1993. ISBN 0 9514854 3 1

4. *Indigenous Peoples & Ethnic Minorities*, Peter Jones, 1993. ISBN 0 9514854 4 X

5. *Educational Values*, Peter Jones, 1994. ISBN 0 9514854 5 8

6. *Family Values in the Mediterranean*, Peter Jones, 1994. ISBN 0 9514854 6 6

7. *Post-Communist Transition: Realities and Perspectives*, Ivan Antonovich, 1996. ISBN 0 9514854 7 4

8. *Value, Values and the British Army*, Patrick Mileham, 1996. ISBN 0 9514854 8 2

Project Publications:

Scottish Enlightenment 1730-1790: A Hotbed of Genius, Daiches, Jones and Jones (eds.), The Saltire Society, 1996 ISBN 0 85411 069 0 (reprint of *A Hotbed of Genius*, Edinburgh University Press, 1986. ISBN 0 85224 537 8)

Revolutions in Science 1789-1989, Jean Jones, 1989. ISBN 0 9514854 0 7

Morals, Motives & Markets - Adam Smith 1723-90, Jean Jones, 1990. ISBN 0 9516377 0 3

Associated Publications:

Philosophy and Science in the Scottish Enlightenment, Peter Jones (ed.), John Donald Publishers, 1988. ISBN 0 85976 225 4

The Science of Man in the Scottish Enlightenment: Hume, Reid and their contemporaries, Peter Jones (ed.), Edinburgh University Press, 1989. ISBN 0 7486 0109 0

Adam Smith Reviewed, Peter Jones and Andrew Skinner (eds.), Edinburgh University Press, 1992. ISBN 0 7486 0346 8

ISSN 2041-8817 (Print)
ISSN 2634-7342 (Online)
ISBN 0 9514854 9 0

Printed by Lothian Print, Edinburgh

If you require this document in an alternative format, such as large print or a coloured background, please contact Ben Fletcher-Watson at iash@ed.ac.uk or +44 (0) 131 650 4671.