

4 October 2007, Thursday
Rt Hon Don McKinnon, Commonwealth Secretary-General
Meeting of Law Ministers and Attorneys General of small Commonwealth
jurisdictions
London, UK

A very warm welcome to the 10th meeting of law ministers and attorneys general of small Commonwealth jurisdictions.

You have met every 3 years since the first such meeting in July 1983, on the Isle of Man.

Your last meeting was in London, in October 2004, and no one will quite forget the heat of the excellent debate that was had, on how far we should legislate for human rights.

That adds up to 24 years of Commonwealth support in the many challenges you face:

.... in *domestic* law, with the day-to-day responsibilities of legal administration, law reform, legislative drafting and legal education – all with little human and capital resources....

.... and in *international* law, in meeting the ever-increasing demands of international obligations.

In that quarter of a century, there have been many highlights in our work together.

There have been the highlights that make headlines: for instance in drafting the Constitution of St Kitts and Nevis in 1983, or the Constitution of Swaziland in 2006 – the latter adopted after more than 30 years of rule by decree.

There have been the less obvious 'highlights' of our more painstaking, perhaps less glamorous, work, like: ...

.... reviewing legislation on the 1982 Law of the Sea ...

.... helping negotiate maritime boundaries, for instance in Grenada ...

.... running short courses in legislative drafting in Africa and the Caribbean ...

.... assisting the way Commonwealth small states report to the UN Counter-Terrorism Committee.

So today is about partnership – and planning for the practicalities of implementing policy...

The Commonwealth membership may include some of the world's most populous States, but the 53 nations also include 32 official 'Small States' which have populations under 1.5 million.

We tend to join them with Botswana, Jamaica, Lesotho, Namibia, and Papua New Guinea which are not much bigger.

Some 25 of you are here today.

Small jurisdictions have a special place in the family that is the Commonwealth, and that's why it has long championed their cause, especially in the areas of trade, the environment and maritime boundaries.

It's also why the Commonwealth joined forces with the World Bank on Small States.

In 2000 we convened a global conference on a Development Agenda for Small States.

A landmark report followed in 2000, and another in 2005.

The 2000 Report talked of vulnerabilities.

It established how small states suffer from their remoteness, their susceptibility to natural disasters, their limited institutional capacity, their limited potential for economic diversification.

The 2005 Report talked of new concerns, like the removal of trade preferences for traditional exports like bananas and sugar, and rising concerns over youth unemployment, security and crime, and HIV/AIDS.

Yet in fact it talked less about vulnerabilities, and more about resilience.

Both Reports agreed that small states' best hopes lie in economic diversification, especially in services like tourism, financial services and health.

Meanwhile, alongside those Reports, we in the Commonwealth have also pointed at some of the legal challenges posed to small states, by having to implement new WTO rules.

This is especially the case in the area of intellectual property, where small states often have neither the capacity to introduce the new legislation, nor, sometimes, the interest in doing so.

Here, I think especially of the patent regime on access to medicines.

Put simply, more expensive and less available medicines can seriously affect small states' ability to handle HIV/AIDS, tuberculosis, malaria.

WTO policies have also left small states powerless to preserve what's known as their 'Traditional Knowledge'.

If a multinational pharmaceutical company wants to appropriate a local medicinal herb or cure, then basically it can – and the country from which it takes has very little legal recourse to protect or even benefit from what was theirs.

So Commonwealth small states have as many legal challenges, as they have economic challenges.

.... And we can come together and discuss them today, in part because we come *from* the same place, with the shared legal tradition of the Common Law system, and in part because we are going *to* the same place, in meeting the same challenges.

When it comes to implementing *domestic* law....

In small states, specialisation in the law is a luxury.

The small states lawyer frequently has to be a jack-of-all-trades: from handling criminal prosecutions, to appearing in civil matters, to drafting legislation.

There is a lawyer for every 130 people here in the UK.

In my colleague Katalaina Sapolu's Samoa, there is one for every 2,000 people.

Meanwhile when it comes to implementing *international* law....

First, there is no chance – in the globalised 21st century, in which a challenge for one is a challenge for all – of small state isolation from global developments.

If international law applies to large-state Kenya, then it also applies to small-state Kiribati....

But, second, it's clear that small states genuinely lack the capacity to fulfill their new international legal obligations.

Hence the keynote paper before you for this meeting (on which I commend Dr Chaloka Beyani for his excellent work).

To take one example: last year, on the 40th anniversary of the signing of the two International Covenants on Human Rights – 'Civil & Political' and 'Economic, Social/ & Cultural' – we spoke at length to small state jurisdictions which hadn't ratified them, and asked why.

One problem was the time and complexity of reporting obligations.

Another problem was, simply, working out which Ministries were supposed to take responsibility for safeguarding which human rights.

Another still, was simply in making the time to draft and pass new legislation.

So we see your problems – and we help you solve them.

Real progress has been made.

In the human rights area, Maldives has now ratified the Covenants in the last 12 months; while others – I think of Papua New Guinea and Samoa – are giving them very serious consideration.

We in the Commonwealth have helped this process with short, sharp and focused assistance.

For instance, in the Maldives we provided support in the ratification of the two instruments, and also in the Convention against Torture. We also convened a workshop for the Police on human rights.

The Human Rights Covenants are just two of the international legal obligations. Today you will be discussing several more – like the UN Convention on the Law of the Sea, and the Conventions on International Trade in Endangered Species, and on the Prevention of Marine Pollution from Ships.

I take special interest in two particular aspects of your discussions on implementing international legal obligations.

First, (in the alliance of governments and peoples that is the modern Commonwealth...), let me raise the role of civil society as partners in these processes.

I know that not all of you agree, and that there is debate to be had.

But when I think of the advocacy role of Transparency International and others like it in helping governments move towards ratifying the UN's Anti-Corruption Charter UNCAC, then I fully see the value of civil society engagement in government debates.

Today I urge you to look at the best ways to achieve constructive engagement between government and civil society when it comes to implementing international law.

Second, let me raise the way in which *international law* is adopted by becoming part of *domestic law*.

To domesticate international law requires political will.

This is not always an easy task, especially when it comes up against local, often time-honoured, culture.

Slowly but surely, we are witnessing change here.

For instance, we are helping CARICOM develop model laws in areas like Equal Opportunity, and Domestic Violence.

I ask you to look at this issue today, as well.

So what is the foundation stone of everything that *you* are, and everything that we discuss in these meetings?

It's this: whether Commonwealth small states are enforcing domestic law or international law, they are enforcing the *rule* of law, as enshrined by our Commonwealth Declarations of Principle of 1971 and 1991.

Those Principles were developed further by the 2004 Latimer House Principles which defined and differentiated the roles of the three branches of Government: the legislature, the executive and the judiciary.

But some recent events in some small jurisdictions have weakened the rule of law.

You may know that I have just returned from a meeting of the Commonwealth Ministerial Action Group in New York, where the situation in Fiji was discussed. There, the Chief Justice was unlawfully and forcibly removed, and an acting chief Justice was then appointed – again unlawfully. By these acts, the judiciary was in effect politicized, and its independence compromised.

An independent judiciary is integral to upholding the rule of law. 'Independent' should never mean 'unaccountable' – but it should mean 'independent'.

Ministers, Attorneys-General, the rule of law is your professional reason for being.

It is what guarantees your citizens policing that 'serves and protects'.

It is what guarantees them fair trial in a court of law, according to the statutes of national legislation.

If they are found guilty of a crime, it is what guarantees them reliable, responsible remand and rehabilitation.

And when we ask what the rule of law actually means to us, I recall Eisenhower, who said that 'the clearest way to show what the rule of law means to us in everyday life, is to recall what has happened when there is no rule of law'.

May the force of that vision be a lantern to your feet and a light to your paths. I wish you a very successful conference – thank you.

ENDS