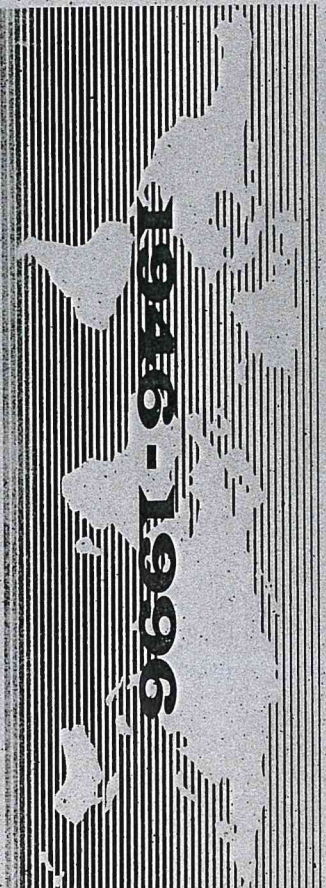


CHALLENGES FOR LAW AND LAWYERS IN THE NEXT MILLENIUM:
DEMOCRACY IN DOMESTIC AND INTERNATIONAL LAW
Lennox S. Hinds, Editor

ASSOCIATION INTERNATIONALE DES JURISTES DEMOCRATES
INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS
ASOCIACION INTERNACIONAL DE JURISTAS DEMOCRATAS
МЕЖДУНАРОДНАЯ АССОЦИАЦИЯ ЮРИСТОВ ДЕМОКРАТОВ
國際民主法律家協會
رابطة المحققين العالميين الديموقراطيين

CHALLENGES for LAW and LAWYERS
in the NEXT MILLENIUM:
DEMOCRACY IN DOMESTIC & INTERNATIONAL LAW



FINAL REPORT OF THE XIVTH CONGRESS
PROCEEDINGS

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FINAL REPORT OF THE XIVTH CONGRESS
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April 1 - April 5, 1996
Peninsula Technikon College (Pentech)
Cape Town, South Africa

Prof. Lennox S. Hinds, Editor in Chief
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In Memoriam

**W. HAYWOOD BURNS
M. SHANARA GILBERT
FELICIA ROBERTS**

ALL THESE WERE HONORED IN THEIR GENERATIONS,
AND WERE THE GLORY OF THEIR TIMES.
THERE BE, OF THEM THAT HAVE LEFT,
A NAME BEHIND THEM,
THAT THEIR PRAISES MIGHT BE REPORTED.

Matthew 44:7

SPECIAL APPRECIATION

THE REPRODUCTION AND INTERNATIONAL
DISSEMINATION OF THIS IADL XIVTH CONGRESS
REPORT OF THE PROCEEDINGS, DEDICATED TO
THE MEMORIES OF OUR COLLEAGUES, WAS
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THE IADL WOULD ALSO LIKE TO EXPRESS
PARTICULAR APPRECIATION FOR THE
ASSISTANCE OF COLIN GREER, PRESIDENT OF
THE FOUNDATION AND OF
PROF. JOHN O. CALMORE OF ITS BOARD WHO
ATTENDED THE IADL XIVTH CONGRESS,
MOURNED OUR LOST COMRADES AND REJOICED
IN THE NEW SOUTH AFRICA WITH US.

TABLE OF CONTENTS

	<u>Page No.</u>
Dedication	1
About the International Association of Democratic Lawyers (IADL)	6
Information Concerning IADL Activities, Publications and Membership	7
Constitution of The International Association of Democratic Lawyers	8
Officers of the International Association of Democratic Lawyers Elected at the XIVTH Congress	15
Special Appreciation.	19
IADL Officers at the XIVth Congress	20
Overview of The XIVTH Congress	21
Introduction to the Congress Proceedings	23
Opening Congress Plenary Sessions April 1, 1996	25
Commission I Rights to Economic and Social Development	27
Commission II International Remedies for Violations of Human Rights & the Duty of Solidarity	29
Commission III International Interdependence	33
Commission IV International Crimes	25
Commission V Administration of Justice	27
President Mandela Addresses the Congress	43

TABLE OF CONTENTS

	<u>Page No.</u>
Tragedy Strikes	44
Report on Special Meeting on Violence Against Women	44
Resolutions Adopted at the Special Session on Women	46
The Case of Lockerbie and the Rule of Law	47
Memorial Service	47
General Assembly Meetings April 4-5, 1996	48
Conclusion	49
Opening Plenary Presentation, Amar Bentoumi , Secretary General of The International Association Of Democratic Lawyers	50
Address of Prof. Kader Asmal , Minister of Forestry and Water, Opening Plenary, 1 April 1996	55
From Liberation Movements to State Power, President Nelson Mandela , South Africa	62
Resolutions Adopted by the General Assembly of the XIVTH Congress Capetown, South Africa	67
The Declaration of the XIVTH IADL Congress Fifty Years after its Founding	67
Resolutions on International Issues	69
Abolition of Nuclear Weapons	69
The United Nations	70
Global Environmental Issues	71
Debt	72

TABLE OF CONTENTS

	<u>Page No.</u>
Embargos and Blockades	72
Terrorism	73
Resolution to Encourage Lawyers to Use New Tools Against International Crimes Committed Domestically	74
Resolution on Traffic in Children	75
International Adoption	76
The Rights of Refugees	77
Human Rights of Homosexuals and Bisexuals	77
Resolutions on the Independence of the Judiciary	77
Resolutions on Ad Hoc Tribunals and The International Criminal Court	78
Military Bases	78
Resolutions on Regional Issues	80
Cuba	80
Puerto Rico, Panama, and the Maldiv Islands	81
Antilles	81
Palestine	81
Somalia	83
Resolution on the Lockerbie Affair And Sanctions Against Libya ..	83
Sudan	85

TABLE OF CONTENTS

	<u>Page No.</u>
UN Membership Fees	86
Korea	86
Germany	87
Sahara	87
Individual Cases	88
Veronique Akobe	88
Mumia Abu Jamal	88
Liliana Beatriz Costante, Argentina, Market Economy, Dehumanization and Political Dominance: The Case of Argentina,	89
Alicia Noemi Farinati, Argentina, Globalization & Democracy (English Translation)	94
Gladys Mackinson, Argentina, The Right to Welfare	101
A Fresh Start for Africa Ann Pettifor and Angela Wood, England	108
Indebted Low-income Countries	128
Burundi	128
Central African Republic	131
Cote d'Ivoire	134
Equatorial Guinea	137
Ethiopia	140
Ghana	143
Guinea	146
Guinea-Bissau	149
Kenya	152
Liberia	155
Madagascar	158
Mali	161

TABLE OF CONTENTS

	<u>Page No.</u>
Mauritania	164
Mozambique	167
Niger	170
Nigeria	173
Rwanda	176
Sao Tome and Principe	179
Sierra Leone	181
Somalia	184
Sudan	187
Tanzania	190
Uganda	193
Zaire	196
Zimbabwe	198
Zambia	201
Monique Picard-Weyl, France, The Jungle of Liberalism: Aggression Against ThePrinciples of International Law,	204
Beatriz Rajland, Argentina, On the Rights of the Peoples	207
Cynthia D. Robbins, USA Redressing Economic Injury Through a <u>Pro Bono</u> Public Interest Law Practice	212
William Waterman, Jr., USA Worker Ownership of Enterprise: A Vehicle for Egalitarian Development	234
Masahiro Igarashi, Japan. The Control of Multinational Corporations and Popular Participation in Economic Development	261
Eric Sirotkin, USA Work in the Post-Market Economy: Securing Human Dignity in a Decreasing Job Market	273
Kunibert Raffer, What's Good for the United States Must Be Good For the World: Advocating an International Chapter 9 Insolvency	294
Patrick Twomey, United Kingdom Both Stranger and Fiction: Redefining the Refugee in International Law	305

TABLE OF CONTENTS

Page No.

Daniel A. Stragá, Argentina, A Critical View of the Convention Against Torture	327
Bill Bowring, United Kingdom, France, Polynesia, Nuclear Testing, The World Court: Law and The Public Conscience	333
Jitendra Sharma, India, The Nuclear Non-Proliferation Treaty, The Comprehensive TestBan Treaty and The Indian Position	353
Arthur Heitzer, J.D., USA, The US Embargo Against Cuba: A Crime Against Humanity	360
Ann Fagan Ginger, USA, New Tools To Use in Their Own Cities and Countries Against International Crimes Committed Domestically	381
Dr. Budimir Košutić, Yugoslavia, Universal Protection of Human Rights and the International Criminal Court	394
John Philpot, Canada, The International Criminal Tribunal for Rwanda: Justice Betrayed	404
Prof. Dr. Zoran Stojanović, Yugoslavia, International Criminal Court: Utopia or Reality? The Tribunal for the Former Yugoslavia	421
Ann Fagan Ginger, USA Trial by Jury for Defendants from Common Law States to Strengthen Acceptance of the International Criminal Court	435
Shanara Gilbert, USA, Equal Justice or Substantial Injustice? The Crisis in Provision of Criminal Defense for the Indigent Accused in the United States	445
Ms. Niloufer Bhagwat, India, The Administration of Justice: the Criminalisation of Political Expression as a Method of Political Control	464

TABLE OF CONTENTS

Page No.

Adjoa Artis Aiyetoro, USA, Perceptual and Institutionalized Racism as an Impediment to Access to Justice by the Accused	479
Dr. Celsa Pico Lorenzo, Barcelona, Spain Right to Access to Justice, to the Independence of the Judicial System, and the Defense of the Lawyers and Judges under Attack	489
Jane Winter, England, Intimidation of Defense Lawyers in Northern Ireland	504
Dullah Omar, Remarks Made during the IADL Celebration Commemorating the Lives of Haywood Burns, Shanara Gilbert and Felicia Roberts .	520

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A P P R E C I A T I O N

The Bureau and Preparatory Committee of the International Association of Democratic Lawyers (IADL) wish to extend their profound appreciation to the Congress's hosts, The National Association of Democratic Lawyers of South Africa (NADEL), for the assistance of its Members, and, especially, General Secretary Vincent Saldanha, for their invaluable participation in the planning, preparation, and execution of this Congress. Special gratitude is also extended to Clive Newman Conferences, Excelsus and Making Music Productions for their assistance with Congress arrangements.

The following institutions and individuals are also gratefully acknowledged for their generous donations of resources, time and hospitality, particularly during the difficult days following the accident in which our three colleagues died.

Dr. Brian Figaji, Rector, Peninsula Technikon (Pentech)
Prof. Kader Asmal, Minister of Water Affairs and Forestry
Johnny de Lange, National Assembly, House of Parliament
Anne Else, Volunteer Congress Coordinator, United States
Dullah Omar, MP, Minister of Justice
Enver Daniels, Special Advisor to the Minister of Justice
Annetjie Marais and Staff of the Public Relations Office
of the Parliament Buildings
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Spier Wine Estate
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OVERVIEW OF THE XIVTH CONGRESS

☒ Attendance

Attendance at the 14th Congress of the IADL was open to all lawyers and jurists, whether members or not, committed to the safeguarding of human rights and international cooperation and prepared to promote respect for the fundamental rights of the peoples of the world to national independence, self-determination, development, peace and the preservation of the global environment.

The IADL General Assembly meetings were held on April 4 and 5, 1996. Only affiliated members were authorized to vote or discuss matters on the General Assembly agenda under the terms of the IADL Constitution.

Participants, not members of any affiliate organization, were eligible for Observer status only at meetings of the IADL General Assembly.

☒ Congress Languages

At Plenary Sessions the working Languages were English and French. At meetings of Commissions and Working Groups, the working language of the Congress was English. Simultaneous interpretations in French, Portuguese, Spanish, Arabic, and Japanese were also available from volunteers at many sessions.

☒ Registration Fees

The registration fee for the Congress was \$150 for attendees from North America, Europe, and Japan, \$100 for all others.

☒ Organization of the Proceedings of the 14th Congress

All discussions were conducted in a spirit of mutual good will, understanding and courtesy.

☒ Plenary Sessions

The program of the Congress included plenary sessions to open and close the 14th Congress proceedings.

the case discussed above.

It is the contention of this paper that pain should not be measured or quantified. Just one act, an act of "medium intensity" that caused the death of the two human beings, Felix Morinigo and Walter Bulacio made them the victims of torture. In the first case, the courts are still discussing whether Comisario Miguel Angel Esposito's blow on one boy's head was the cause of death or congenital aneurism. In the second case, policeman Moya was convicted to serve 8 years in prison, the minimum penalty for homicide. The penalty for the actual crime committed, torture followed by the victim's death, is a life sentence.

Finally, the criterion of "severity" is inherently unreliable. When violations to human rights are considered significant acts in a given society, then individual acts can qualify as torture. On the other hand in societies in which the national policies condone public officials violating the integrity of citizens, victims need to prove a great deal to claim torture.

Such distinctions serve only one purpose, to permit tolerance of practices that are nothing other than torture, but are hidden under the guise of "inhuman or degrading treatment," allowing illegal and clandestine acts to be judged, if ever they are, according to less severe standards that permit torturers to wait for trial out of custody.

Conclusions

We consider the 1984 Convention distinctions between torture and mistreatment to be a mistake, for they are essentially identical concepts. All of them are abhorrent crimes that must be defined as torture. The international community should insist the face of these barbaric acts in unifying both concepts into only one criminal definition: There is no such thing as inhuman or degrading treatment. Such acts are torture, and must be consequently punished as torture by national courts of law.

The Convention definition is too weak to accomplish the objectives of protecting people from national lawlessness.

FRANCE, POLYNESIA, NUCLEAR TESTING, THE WORLD COURT: LAW AND THE PUBLIC CONSCIENCE

by
Bill Bowring, United Kingdom²⁴⁵

INTRODUCTION

As this paper was delivered, the advisory opinion of the International Court of Justice (ICJ), on two questions was expected. The first, posed by the World Health Organisation (WHO) on 14 May 1993, asks: "In view of the health and environmental effect, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"²⁴⁶ The second came from the United Nations General Assembly, which, following stormy debate, on 15 December 1994 adopted a resolution²⁴⁷ asking the ICJ urgently to consider the question: "Is the threat or use of nuclear weapons in any circumstances permitted under international law?". During the debate in the UN First Committee, Gerard Errera, giving France's explanation of vote, exploded: "It is a blatant violation of the UN Charter. It goes against the law. It goes against reason..."²⁴⁸ France is keenly aware that an adverse ruling, particularly on the General Assembly's request, will at the least be embarrassing.

This is not least because of the fact that, on 5 September 1995, French nuclear testing resumed in French Polynesia, after the announcement by President Chirac in June 1995 that the three and a half year long moratorium declared by President Mitterand on 8 April 1992,

²⁴⁵Haldane Society of Socialist Lawyers.

²⁴⁶ See ICJ Communiqué No. 93/26 (1993), and WHA 46,40 Geneva, 14 May 1993

²⁴⁷ UN General Assembly Resolution 49/75 of 14 December 1994, adopted by 78 votes to 43, with 38 abstentions and 25 States not voting (France, Russia, the US and UK voted against; China did not vote.)

²⁴⁸ 18 November 1994. See Kate Dewes and Robert Green *The World Court Project. How a Citizen Network Can Influence the United Nations* (1995) Pacifica Review of La Trobe University