

## **Majlis Perasmian Persidangan Undang-Undang Komanwel Ke-12**

Sunway Pyramid Convention Centre 13 September 1999

Terlebih dahulu saya mengalu-alukan tuan-tuan dan puan-puan yang menghadiri Persidangan Undang-Undang Komanwel Ke-12 ini dan mengucapkan terima kasih kepada pihak penganjur atas jemputan untuk menyampaikan ucapan dan seterusnya merasmikan pembukaan persidangan ini.

2. Saya ingin mengambil kesempatan ini untuk mengucapkan syabas dan tahniah kepada pihak penganjur yang telah berusaha menganjurkan persidangan yang bermakna ini.
3. It is an honour for Malaysia to be given this opportunity to host the 12th Commonwealth Law Conference, and to witness this assembly of distinguished members of the legal fraternity comprising both public and private lawyers, as well as members of the judiciary from the Commonwealth. It makes it even more memorable that this Law Conference in Kuala Lumpur is the last in this century.
4. The conference is timely not only because we are approaching a new century and millennium but the rapid advances in technology have forced us to think differently about everything that we do. And this new thinking, these new ideas, outlook and philosophy necessitate changes in the perceptions of right and wrong, good and bad, justice and injustice. With these changes in perceptions there arise the need for new laws and ways to enforce the laws. If we fail to respond there is a possibility for anarchy to characterise human society and for the weak to be bullied by the strong, the poor by the rich.
5. In the days of sailing ships and even motor- vessels, quarantine laws were not necessary. The time taken to get from one place to another was sufficient for any incipient disease carried by travellers to manifest itself. But today we travel at jet speed and we travel very frequently. Inoculations against diseases and quarantine have become necessary. But quarantine is no longer as practical as when travel by jet was infrequent and jet planes had to make frequent technical stops. Today one flies from London to Kuala Lumpur non-stop. It would be meaningless to quarantine for 14 days after a 12 hours jet flight.
6. Malaysia is one of the biggest rubber producing countries. Our greatest fear is the leaf blight disease which affects Brazilian rubber trees. The disease can be carried unknowingly on the body or clothing of travellers. It is impractical to ask people flying from Brazil to go to a third destination first, stay there for a week, and then come to Malaysia. But leaf blight can destroy the whole Malaysian rubber industry. What can we do if this happens? If group action can make tobacco companies pay huge sums by way of compensation, how can the total destruction of a valuable national industry involving millions of people be compensated?
7. But this of course is not the only problem with jet-age travel. Criminals, saboteurs, hijackers, drug smugglers and illegal immigrants can now flit from one

country to another. Checking on them takes time and is not practical. Also countries can no longer isolate themselves. People come, they observe and they comment; comments which can be damaging to a country and cost millions of dollars worth of trade. Reporters, TV crew and an assortment of experts fly in and fly out; subjecting a country to close scrutiny.

8. A country has to behave or it will come in for damaging criticisms. On the other hand a country may be well-behaved but those bent on damaging it can still make adverse and damaging reports. Again if a lung cancer patient must be compensated by tobacco companies, cannot deliberate lies which damage the economy of a country be similarly compensated following legal proceedings?

9. Law enforcement and keeping the peace in a country can no longer be done by beating up people and throwing them in the clink. Law enforcers must be gentle and circumspect because what they do will be televised and shown all over the world, giving their country and their Government a bad name.

10. But then how do you deal with a violent, stone-throwing and shop-burning crowd of rioters? How do you protect the shopkeepers and hawkers from them if gentle persuasion fails? Or do we dismiss the losses incurred by these traders because the democratic rights of the rioters are far more important than the rights of other citizens. If Governments cannot keep law and order and protect innocent citizens, then why do we have a Government? Could we really be better off without Governments? It has already been suggested that the business community can regulate itself without Government intervention. Can we extend this to rioters as well?

11. The ease of travel has apparently put a strain on law enforcement. The TV crews may be doing a good turn by restraining irresponsible Governments but they can also restrain responsible Governments from protecting the rights of innocent citizens going about their own businesses, to earn a living. While the law provides for litigation, it does not provide for damage or even death caused by crowds of rioters. If we consider that this is just, then we need to do nothing. But if we care we have to formulate new ways and laws which can prevent undue suffering by innocent victims of street rioters. Recently action is being taken against expressions of rage on the road and in the air. Cannot there be similar provision for rioters? Presently they are all being released because there are no concrete evidence.

12. Thus the indirect effect of a world which has become smaller due to the speed of jet travel. Perhaps it is good, because Government and the law enforcers must behave now. But we cannot tell the victims that it is good because they can only see the injustice perpetrated on them.

13. Jet travel exposes us to the values and cultures of other people. But sometimes the other people, especially those from powerful countries want to impose their values and cultures on others. And this will cause conflicts and violence even. Don't people have any more rights to live their own way of life? Who protects them from the insidious propaganda aimed at changing them? Do

we have to have a violent clash of civilisations in order to settle who is right and who is wrong? It does not speak well of the so-called tolerant modern civilisation if the ways and values of the victor are imposed on the defeated. It seems that modern civilisation is in fact more primitive than older civilisations.

14. But the speed of travel is nothing compared to the speed with which news and data travel. Information is instantaneous. It is good of course to be able to know what is happening immediately, in real time as they say. But then the ease and speed of news, pictures and data communication can be damaging as well, especially if it is abused.

15. Today we are blessed with the Internet. You can get any and every information on the Internet. You can learn how to make a nuclear bomb if you want to. But greater than this danger of someone irresponsible building a nuclear bomb is the ability to make pipe bombs, to make a riot more violent. And there are other lethal weapons which we can learn how to make from the Internet.

16. Then there is the assault on the moral values of people, of the young in particular. Pornographic literature and pictures can be accessed through the Internet, down-loaded and distributed. There is no known effective way of screening out these undesirable information.

17. Some countries have tried making access to such things illegal. But they have not been successful in enforcing the law. Some have of course advocated absolute freedom of access to everything and anything, pornography included. They say that society must develop a set of values which will make it resistant to the undermining of its morals.

18. But can we really do this? We now read of children raping other children. Teenagers now indulge in free sex and some heightened their thrills with violence against their victims and even murdering them. There is perhaps a latent rapist and murderer in all of us. But fear of condemnation by society, fear of the law and of punishment may keep this latent tendencies in check. When society accepts that there is nothing we can do to check wild acts, then those who had otherwise kept their lusts under control will see no more need to control it. And when this happens rapes and murders will become more and more common. Such is the effect of society's inability or unwillingness to prevent the abuse of information technology. In some countries owning a gun is a right. No matter how many people are killed with guns, the advocates of gun ownership will resist any attempt to ban ownership of guns. It would seem that we cannot touch the right to free access to information because like ownership of guns this has become a part of human rights.

19. But the speed of information has another devastating effect. You may know that Malaysia and its neighbours were subjected to attacks by currency traders. This is made possible through the magic of the computer. The currency traders have a system whereby vast sums of money can change hands on computer screens without one single cent in cash crossing any border. The only thing that happens is changes in the figures on the screen, as someone's money is

borrowed and sold and the value depressed. Through repeated sale of the currency, the value can be depressed to any level. The seller may then buy at the lower price and deliver to the person he had previously sold the money to when the price was higher. He makes a huge profit as the deal involves hundreds of millions or even a billion dollars.

20. For the trader currency trading is good profitable business. But the devaluation impoverishes the country whose currency has been devalued. Malaysia imports 100 billion dollars of goods a year. Malaysia' s currency depreciated by 50 per cent, incurring a loss of purchasing power of 50 billion dollars.

21. This is a real loss and it is felt by the people through inflated cost of imports, by businesses as they suddenly find themselves able to pay for only half of the goods they import, by banks as their clients fail to pay debts, by the Government as failing businesses pay less taxes. So severe is the effect that companies and banks were nearly bankrupted. The Government was being dragged down with it.

22. Failing businesses in some of the countries attacked resulted in millions of workers being thrown out of jobs. They cannot buy food, or milk for their children or medicine. They take to the streets, rioting and burning shops and looting them. They raped and murdered. Unable to find their tormentors, they turned on their Governments and overthrew them.

23. A rapidly growing country can suddenly become a basket case because its currency has been devalued by the currency traders.

24. The traders buying or selling a billion dollars may make a few hundred million dollars for themselves. Yet they cause losses of tens of billions to the country whose currency they have devalued. And all this is done simply by moving figures on a computer to show that a transaction has taken place. No real money is involved but the effect is even worse than actually trading in cash. Such is the effect of electronic data transfer.

25. During the currency turmoil in East Asia, hundreds of billions of dollars in terms of purchasing power were lost by the region. The currency traders may have made in all a few billions. There is therefore a net loss of wealth, wealth which had taken decades to build up.

26. The Governments of the countries attacked are blamed for not being transparent, for cronyism and corruption. That these same Governments had succeeded in achieving continuous high growth of their economy is dismissed as irrelevant. That the currency cannot possibly devalue itself is never mentioned. The currency traders are blameless even though the currencies were devalued only after they started attacking these currencies. Had they not short-sold these currencies there is no way for the currencies to be devalued. It should be obvious that it is the currency traders and their short-selling activities which devalued the currency. But if anyone accuses the currency traders of causing the

devaluation, they would punish their accuser by devaluing the currency further.

27. The Great Train robber was guilty of robbing money. If he had returned to England he would have been arrested, tried and jailed. But currency traders made huge sums of money through impoverishing countries. What they had done is nothing less than robbing the wealth of these countries and their people. Yet they are not guilty of robbery or anything. They are doing nothing more than trading in a free market. If as a result people lose their money, riot and kill; if Governments and businesses go bankrupt, that does not make the traders guilty of any crime.

28. There was a time when Rockefeller tried to monopolise the oil industry in the United States. His small competitors went bankrupt and he was in a position to sell his oil at any price. He was not doing anything wrong. He was merely availing himself of his competitiveness and his huge wealth to corner the business in a free market. Yet the Government stepped in and enacted an anti-monopoly law to stop such unfair competition.

29. Today we are told that the free market is sacred and it should be left to regulate itself. Since the free market enables currency trading to be done, nothing should be done to curb it even if it impoverishes whole countries and regions. Imagine what would have happened if Rockefeller was allowed to continue with his bid to monopolise the oil market. Would there be fair pricing? Would others have a share in a lucrative business? Yet the powerful, highly leveraged hedge funds are allowed to do anything they like with the free market. The sufferings that they cause is no reason to curb them. No law should be enacted to make currency trading illegal. Even regulating currency trading cannot be entertained.

30. It is clear that perceptions of right and wrong, fair and unfair have changed. Systems are now regarded as more important than the results they produce. A free market must never be regulated even if it destroys nations and people.

31. There is a great unwillingness on the part of the world powers to do anything to curb currency trading. It would seem that the freedom of a few rich people to make huge sums of money through the free market is more important than the sufferings of millions of people, their countries and their economies. Ideas about justice and fair play have now become distorted.

32. The world is rightfully concerned about human rights abuses. However human rights is presently interpreted only as the right of political dissent. No one should be punished in any way for holding political views different from those of the Government. It would seem that the inability to hold dissenting political views imposes tremendous pain on a citizen. A citizen must be allowed to express his dissenting views at whatever cost. If due to his views being expressed there is political instability, riots and killings, these have to be accepted. The death of others, possibly innocent people is of less importance than a person' s freedom to dissent.

33. Again we see a very distorted perception of right and wrong. The Government of a country is considered as having violated human rights because it denies a few people the right of dissent while currency traders who deprived millions of their jobs and income, of their lives even, are not considered as having violated human rights.

34. It would seem that violation of human rights can only be done by Governments while everyone else may oppress millions of people with impunity. Since oppression by people of other people is not considered as violation of human rights, we will not do anything to stop it. Indeed we are seeing the rights of the currency traders upheld while the rights of their suffering victims are ignored.

35. While we are on the subject of human rights, we should also give some thought to the rights of the citizens of a country whose leader is considered to be an oppressive dictator. To force this dictator to surrender, the people of this country are deprived of food and medicine through sanctions. More of these people suffer and die because of the sanctions than the number alleged to have been killed by the dictator.

36. As if this is not enough the country is being bombed continuously in an attempt to force the dictator to submit to international scrutiny of his country. More innocent people are killed as a result. And so in order to ensure that the people are freed from oppression by their leader, they are being starved, deprived of medicine and killed by bombing. Apparently starving these people and killing them do not constitute violation of their rights.

37. Compare this to the rights of a cigarette smoker who despite the warning that smoking cigarettes can cause cancer, was awarded more than one billion dollars in compensation because he claims that his smoking has given him cancer. It is his right therefore to be compensated but the people living under a dictatorship can expect no compensation for whatever misfortune may befall them as a result of the attempt to topple the dictator.

38. Ideas about human rights are getting more and more peculiar. Impoverishing millions of people, depriving them of medicine, even killing large numbers of them directly or indirectly are not considered violation of human rights but arrest a political dissident and the whole world condemns the Government for violations of human rights. That in fact the Government is protecting the rights of millions of other law abiding citizens is irrelevant. The rights of a political dissident outweighs the well-being of the rest of the population.

39. There seems to be something wrong in our perceptions of things. Even legal minds, concerned as they are about justice and fair play seem to be quite unconcerned about what is clearly massive and systematic violations of human rights. They are more concerned about developing countries not understanding legal processes, are corrupt and are disposed towards poisoning and plotting the overthrow of political rivals. Whatever may be the evidence to the contrary, developing countries, former colonies in particular, cannot be doing anything

right in the administration of justice, as in other things.

40. Free trade is such a revered creed that any amount of unfairness and inequity must be accepted if they are the results of free trade. The emphasis is on level playing fields. The size and strengths of the players are considered as irrelevant. Thus a country with a huge market which gives its industries tremendous economies of scale must be allowed to compete freely with the tiny industries of a small country. This is considered fair because the playing field is even. That giants are being fielded against midgets is of no consequence.

41. The World Trade Organisation advocates the opening up of all markets to every one big and small. In theory this means that the products of small countries can enter the markets of the big countries as freely as the products of the rich can enter the markets of the poor. But in practice the poor countries may not have any products to export to the rich at all. If they do they may not meet the high standards set by the rich. At home they will face competition with cheap high- quality goods from the rich countries. In the end they will have to close down and lay off their workers.

42. Perhaps there is no necessity for poor countries to produce anything that the rich countries can produce more efficiently and cheaply. By doing away with tax barriers the people in the poor countries can buy imported products cheaply. But this is only possible if the poor countries have the money to pay for the imports. If they have nothing to export, they will not earn enough foreign exchange to pay for the imports. In the end the foreign products may be cheap but the country just cannot buy for lack of foreign exchange. And their Governments will have no money as they cease to collect taxes on imports. The poor countries and their poor people will only get poorer as a result of free trade.

43. Far from improving world trade the removal of barriers to trade can actually result in a contraction of world trade. Since all the major businesses, industries and banks in the poor countries would be owned by the big players from the rich countries, there will be more outflow than inflow of funds as the profits are repatriated to the rich countries. The poor countries will have no money to buy foreign goods. Trade will contract as a result.

44. Again we see anything but equity in the relationship between poor countries and rich countries. Whether it be currency trading or globalisation and a borderless world, the poor benefits not at all. Do we examine this and formulate laws on international trade? No. Trade must be free. There must be liberalisation and deregulation. The impoverishing of the already poor is no reason for making trade less free.

45. The world' s attention has been focussed by the western media, by human rights groups and assorted NGO' s on the way developing countries conduct their legal processes. Of course they are always found wanting and efforts are made to get these countries to conform to the so-called world standards and universal values. It is therefore not surprising that International Laws and practices receive only scant attention. The International Financial System is one of them. But more

importantly, the structure and the role of the United Nations have not been subject to any updating in keeping with the times.

46. It is ridiculous that this important world body is still tethered to the results of the World War fought 50 years ago. The victory of certain nations in that war seems to entitle them to hegemony over the United Nations and the world forever. The Permanent Five will not yield to anyone nor forego their veto rights. Anyone of them can frustrate the rest of the 170 odd members of the United Nations.

47. This undemocratic power may sit well with China and Russia but the other three countries preach democracy ad nauseam. It does not become them to be blatantly feudal and undemocratic in the United Nations when they so vehemently insist that every country must be democratic.

48. When the Government of a country is feudal, reform becomes difficult as the constitution would require consent of the feudal ruler. And feudal rulers are not likely to consent to their powers being diminished in any way. The situation in the United Nations is the same.

49. The Permanent Five controls the affairs of the United Nations and prevents any dissenting voice from being heard. At times they even ignore international laws and practices. Thus they would think nothing of arresting the leader of a country and trying him under the laws of their country. They mine harbours of unfriendly countries. They bomb and attack countries at will. They actually support what may be described as state terrorism, not in their own country but in other countries, frequently weak small countries.

50. Despite being members of the United Nations small countries can seek no redress against the oppressive measure taken against them. The World Court does not offer this facility as the parties concerned must agree to abide by World Court decisions first. And the powerful are not going to consent to judgement by the World Court.

51. We are about to enter a new century and a new millennium. We cannot say much for democracy in the relation between nations. We are still living in a primitive society in which might is right. Justice and fair play exist not at all. Even as the world gets smaller and every country becomes next-door neighbours to everyone else, there is no equitable laws to govern their relations.

52. The Commonwealth Law Conference brings together prominent figures in the legal profession from almost a third of the countries of the world. You will be concerned and interested in the administration of justice in developing countries such as Malaysia. But I do hope that you will have time to focus also on the problems of international relations in trade, finance, on human rights other than just the right of political dissent, on the onrushing globalised, borderless world in which small countries will no longer be able to seek shelter behind their borders from marauding industrial and commercial giants. The rights of individuals should be protected, but nations too should be protected, for many individuals make up

the nation.

53. Liberalisation and deregulations are being touted as the open sesame to a new world economic order but from what we in East Asia have seen, this new order may very well result in our subjugation, first economically, then politically as well. While we believe in democracy, in human rights and in the rule of law, all these would be meaningless if, directly or indirectly we are colonised again.

54. For many of us the memory of colonisation is still fresh and we must be wary of new ideas which may lead to our losing some if not all of our precious independence. During the recent attack on our currency Malaysia almost had to submit to foreign control of its economy, which could end up with political control as well. We managed to save ourselves but others are not so lucky. We fear that unless we have a hand in the shaping of new ideas about how a globalised world would function, we may really lose our freedom.

55. Malaysia is a democratic country where the rule of law is upheld. You may want to check. You are welcome to do so. We have nothing to hide but open minds are necessary for you to judge fairly.

56. I now have pleasure in declaring the Conference open.