THE SECOND JUSTICE CONFERENCE

"TOWARDS SUPPORTING AND PROMOTING THE INDEPENDENCE OF THE JUDICIARY"

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BACKGROUND: The Second Justice Conference (conference website: http://www.jc-2.com) was held in Cairo 21-24 February 2003 under the auspices of an Egyptian NGO, the Arab Center for the Independence of the Judiciary and the Legal Profession. Other sponsoring organizations included the Program on Arab Governance (POGAR) of the United Nations Development Program and the United Nations High Commissioner for Human Rights. The Ford Foundation also contributed funding and IFES provided expertise.

The stated objective of the conference was "to explore the status of the independence of the judiciary in the Arab region." More specifically, the conference was to "further examine the requirements of an independent judiciary at international law in order to draft a 'covenant of independence' through which progress regarding independence of the judiciary in the Arab region can be measured and followed up."

WHY THE SECOND CONFERENCE? The Cairo conference was called the "second" as a deliberate attempt to position it as a successor to an earlier conference held in Beirut in 1999. The Beirut conference was hosted by the Lebanese Bar Association under the auspices of the Lebanese Minister of Justice gathered 110 Arab jurists from 13 Arab states. It brought together judicial and NGO leaders and produced a declaration providing for a comprehensive set of goals and standards for Arab judiciaries (http://www.iifhr.com/beirut%20declaration.htm). The strongly-worded Beirut Declaration worked to translate general international standards into a form applicable to the Arab world. In some ways the 1999 declaration actually goes beyond international standards in specificity and boldness.

Yet the text of the Beirut Declaration devotes little attention to implementation, or even to monitoring and reporting. And the aftermath of the Beirut conference saw little follow up activity.

The decision of the organizers of the conference to title this the "second" conference thus had two positive effects:

1. It emphasized the indigenous rather than international nature of the agenda; and

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2. It encouraged turning attention from articulation of principles to their implementation.

In general, the Cairo conference took full advantage of this first effect. It is unclear how much it took advantage of the second, though some hopeful signs emerged on the last day.

POLITICAL CONTEXT: The Cairo conference was held just a few weeks before the beginning of the war in Iraq. The regional political situation was clearly on the minds of almost all of the participants, and the only view expressed was that the war was part of an attempt to impose American hegemony on the region. Yet while the war was always in the background, it was almost never in the foreground: participants seemed to feel that their work to strengthen judicial independence had to continue regardless of the regional security environment.

Far more germane was a general oppositional tone to many of the papers and comments: participants focused on existing regimes (particular the executive branch) as the main obstacle to judicial independence and some were willing to use harsh language in denouncing existing political systems.

PARTICIPATION: Most of the participants were current or retired judges from the Arab world; a few NGO activists and academics were present as were some international experts (from the United States, Sri Lanka, France, and Costa Rica). While almost all Arab countries were represented, those from the Arabian Peninsula were not prominent and the greatest number of participants came from Egypt. At some points this led the conference to take on the flavor of an intra-Egyptian dialogue. Because of the central position of Egyptian legal models and the prestige of the Egyptian judiciary, this was not completely counterproductive, and in the latter phases of the conference an effort seems to have been made to ensure that non-Egyptian participants have their views represented.

ACTIVITIES: Most of the conference met in plenary session, with participants presenting and discussing a series of papers identifying the major obstacles to judicial independence. In some ways, **this format contained some serious liabilities**:

1. Much of time was spent reiterating the Beirut principles and the failure of existing judiciaries to meet existing standards. This had the effect of making quite clear that judicial independence is not an externally-imposed ideal, but it diverted attention from practical steps that could be taken.

2. Much of the tone was quite political and often very confrontational. In this sense, there was a healthy does of realism regarding the domestic political context for judicial reform. But the realism might be unhealthy in other ways: it risks setting the standards too high; indeed, some of the discussions reflected anger and despair rather than constructive thinking.

3. The chief obstacles identified were exclusively political and most related to the domination of the executive branch over the judiciary. This probably was a natural result of a conference dominated by judges. As a result other extremely pressing issues (such as support services for the courts, ADR, administration of justice, legal education, and legal reform) received only passing mention.

4. By focusing on a series of general papers, discussions tended to be repetitive rather than cumulative and did not move easily from diagnosis of problems to proposed solutions.

But while the first two-thirds of the conference could be fairly criticized on these grounds, **ultimately more constructive aspects may have prevailed:**

- The Arabic translation of the IFES guide on judicial independence—which is quite practical and detailed—provoked some interest. A survey of participants in which they were asked to identify obstacles problems also generated more specific results.

- While most of the participants were judicial, there was a widespread recognition of the need to work with NGOs and some interest in generating a constituency for judicial reform. Since judges in the Arab world have often regarded such activities suspiciously—as themselves possible infringements on judicial independence—the conference may have marked the beginning of a constructive change in attitudes toward promoting reform.

- The conference broke up into working groups in the afternoon of the third day. I attended one of those groups and found that it overcame many of the problems of the plenary sessions: the range of countries considered was broader, discussion was more informal and practical, and the chair of my session made a concerted effort to distill a series of recommendations to carry back to the plenary on the final day.

- There were two sessions on the final day of the conference. The first discussed the suggestions emanating from the working groups. The second presented a coherent "Cairo Declaration" to follow on the 1999 Beirut Declaration. Since this had been identified as a major goal of the conference, its success must rest on the text of the Cairo Declaration.

CAIRO DECLARATION: The Cairo Declaration does succeed in moving beyond the Beirut Declaration in identifying far **more specific tasks**.

- Some recommendations are narrowly political, aimed at the authoritarian practices that have undermined judicial independence in the Arab world: barring military courts from trying civilians and the abolition of exceptional courts.

- Other recommendations are broadly structural: giving more authority and

autonomy to the judicial councils that oversee the judiciary in most Arab states; allowing judges to form clubs; and strengthening judicial training.

These are the sorts of recommendations that have recurred in recent years in the discussion of judicial independence in virtually every Arab country. While these parts of the declaration are thus familiar, their codification in a document of this kind opens possibilities for the development of a regional reform effort.

The Cairo Declaration makes a welcome foray in some **less familiar (and more practical) directions** in two ways:

- There is a clear recognition of the need to develop more effective strategies than simply lobbying the executive branch. The declaration calls for human rights education, creation of a regional network for judicial reform, cooperation with NGOs and international organizations. And there is even recognition of the need for the judiciary to clean its own house: the declaration calls (perhaps too vaguely) for the development of a code of conduct for judges.

- The declaration also calls for developing mechanisms for monitoring and reporting compliance with the principles of judicial independence. It may be something of a disappointment that no specific structure is recommended. Participants did discuss some possibilities (such as involving the Arab Lawyers Union or the formation of a viable association of judges clubs) and the declaration also makes mention of civil society in this regard.

Clearly, the implementation of the Cairo Declaration—and the success of the conference as a whole—depends on realizing the recommendations on monitoring and reporting.

CONCLUSION: The conference showed both the positive and negative aspects of judicial reform work in the Arab world. On the positive side, there is a strong interest in reform among judges in the region and a willingness to stake out bold political positions supporting reform. There are also some fairly specific ideas about what needs to be done. Outside donors will, in that sense, face a welcoming environment, at least within regional judiciaries.

On the negative side, the discussion of how to create constituencies for reform outside of the judiciary is still embryonic as are efforts to devise practical reform strategies. Judiciaries still focus most of their attention on issues of structural autonomy from the executive. While most acknowledge that other problems exist—including inefficiency and incompetence—the Cairo conference suggests that something of a trade union mentality exists among judiciaries.