SIFoCC

Standing International Forum of Commercial Courts

Speech delivered by:

The Honourable James Allsop AC, Former Chief Justice of the Federal Court of Australia at the Fifth Full Meeting in Doha on Sunday 21 April 2024

"The Spirit of the Judicial Task and the Importance of International Judicial Dialogue"

Minister for Justice of Qatar, Chief Justice of Qatar, Your Excellencies, Chief Justices, Judges, colleagues, ladies and gentlemen.

It is a great honour and a privilege to be asked to give this keynote address. I am very grateful for the opportunity.

First, I wish to acknowledge and thank Sir Robin Knowles for his assistance in coming to the topic of my paper this evening and for his most helpful comments on drafts. I had been undecided about what to say at such a gathering, such an important gathering, as this: Whether I should talk about SIFoCC, or commercial law, or a particular legal subject. Sir Robin's gentle nudging and suggestions led me, really both of us, to think that I should talk about those things, but through a lens of some universality or commonality of experience, and transcendence. That said, the paper is my responsibility, and to the extent it deals with my personal reflections drawn from my experience in the law and as a Judge, I take full responsibility for all shortcomings.

Towards the end of this address, I have included a personal reflection upon a deceased former colleague. I have done so because it was the best way to encapsulate and express *from experience* the nature of the spirit of the judicial task. Abstract expressions of indefinable qualities often fail to bring home the essence of a subject. That reflects the limitation of abstract language: the limits of text, which is an endemic feature of any legal system built on the written word. A description of experience often conveys more than abstracted analysis.

An opportunity such as this is unique. We have a gathering of Ministers of State, diplomats, Chief Justices, Judges, court officers,

scholars, students and the general public, many of whom come from all around the world, representing diverse cultures and legal systems, held in a place and region that, for millennia, has been central, both geographically and culturally, to human, commercial and societal exchanges and development: a place of cultural depth and sophistication.

Thus, it is appropriate to elevate discussion, to some degree, in the way we contemplate the judicial task. This is particularly so because the judicial task is timeless, incapable of precise definition, understood experientially and emotionally, as well as intellectually, and central to a just civil society.

The title of this address contemplates the existence or presence of the spirit of the judicial task. Spirit is indefinable; it involves the pervading theme or essence of how one performs the task, reflecting why one does the task, and whom and what the task serves.

It is not self-evident where to begin in an explanation of the judicial task. That is because there are few, if any, static points of position at which to begin. It is, perhaps, helpful to begin by saying something of the law and what is involved in resolving disputes under the law. This is an apt point of departure because, in order to appreciate the nature of the judicial task and why the spirit of the task is so important, indeed essential, to the creation or inspiring of a sense of justice being done, one must reflect upon the law itself and what it is, what it is not, and what resolving disputes under the law means. This assists in giving human, and not only theoretical, form to the Rule of Law.

"What is law?" is a large jurisprudential and philosophical question. For a working description today, and recognising the diversity of cultures and societies present, one can say that law includes various constituent materials: statutes or codes, the judicial interpretation of their meaning, judicial rule making, rules, principles and customs. These imperfectly segregated materials are drawn from parliaments, executive decrees, custom, history, social values, and expectations. They are all basally human, societal and by reference to customary activity within and between societies. How these materials combine, disengage, change and apply to (sometimes complex) factual circumstances, is both a legal and a social question. This must be so, as law is a binding agent, part of the structural form and tissue, of human society: its form, content and application being determined or shaped by its social, and its human, character and context.

One of America's greatest of scholar-judges, Oliver Wendell Holmes once said in a remarkable speech he gave to Boston law students in 1897,[1] that the law did not suffer from too much theory, but rather not enough, as long as theory was conceived of as getting to the bottom of the subject. He recognised and understood that there was an inexpressible binding of theory and human experience in the law, and that the legal system[2] had a final title to respect, not because it was an Hegelian dream, but because it was part of the lives of people.

The biographer[3] of one of the United States' greatest Judges, Benjamin Cardozo, drawing on his close understanding of Cardozo's work, called law 'organisable morality'. Such was not a definition, nor was it some

[1] "The Path of the Law" in Holmes *Collected Papers* (Constable & Co London 1920) at 167
[2] Although speaking of the common law, his remarks can be understood as wider in significance.
[3] Beryl Levy *Cardozo and Frontiers of Legal Thinking* (Oxford University Press New York 1938)

denial of the authority of the rule-making organs of the State, and their rules and principles, nor was it a denial of some essential attributes of law: definition, textual clarity, and the requisite degree of available certainty and stability. Rather, it was a pointing in the direction of societal context and reason in which the daily struggles of humans take place, over power, wealth, safety, freedom, religion and belief, sustenance, sometimes survival, and, in the broadest sense, human happiness and meaning.

Notwithstanding the presence of these materials of statutes and codes and their interpretation, rules, principles, and custom all recorded with such textual clarity as is possible, the law is not a complete, exhaustive and self-referential system containing the legal answers to all legal problems that are thrown up by the circumstances of life. Often, the logical application of the text of a statute or rule does not provide the clear or definitive answer to a concrete legal problem thrown up by circumstances.

Social and human values, in the silent and imperceptible movement of society, are ever present in the law. One needs perspective, sometimes of time, sometimes of quiet reflection, to appreciate how the resolution of concrete legal problems by law and legal technique can be affected deeply by social values, by a sense of balance, and by a suspicion of the worth of simple general propositions taken to their logical conclusions. Law, like life, can sometimes be simple; but often, indeed generally, neither is.

Further, the law and its application, being the judicial task, often involves dealing with, and reconciling, opposites and antitheses, sometimes

seeming irreconcilables that pervade both life and law, and which lie at the heart of dispute resolution and of the day-to-day exercise of the judicial task. This can be seen in the relationship between certainty and uncertainty, rule, principle and exception; in the endemic difficulty, sometimes impossibility, of definition, despite the essentiality of the requisite degree of definition; of the need for taxonomical structure and precision, where possible in the expression of abstract concepts, all in the face of the implicit wholeness of human relational ideas drawn from thought, feeling and emotion; and above all, it can be seen in the limits, but the illuminating power, of text – of words.

These reconciliations make up (though we may not realise it as we do it) much of our task as Judges to express and apply the law for the individuals who come before us and for the society and the people which and whom we serve.

All the above reflects the reality that many legitimately disputed questions for resolution under law have no one ‘correct’ answer that is to be ascertained by reading and applying the pre-existing text of rules, or by deductive logic. Evaluation of contending and conflicting considerations is usually present. The rule or principle may not be not directly applicable, and analogical reasoning may be required; or the rule, if clear in expression, may not provide for simple application, but for evaluative characterisation of facts, even if the primary facts are uncontested.

This evaluation, and the struggle with and resolution of, often present opposites or antitheses in many contested questions is difficult to grasp even for trained lawyers of the highest calibre. Even when grasped and accepted, there is the question of disputed views in the resolution of

these opposites, of these uncertainties, and of these evaluations, in a particular case. This is not to say (far from it) that there is a personal or institutionally embedded incoherence or choice in the law or in its application. But it is to say that for the acceptance of the results and decisions of the dispute resolution process (the judicial task) there is the need for the presence of a legitimising character of the process. Here, we come to judicial power, and to the spirit of the judicial task.

The judicial task involves the deployment of power, State power. But it is a unique form of power. It is in essence protective in character – whether of the individual, or of the group, or of society, or, sometimes, of the judicial institution itself. It is not assertive or self-wilful, as other forms of public power properly are. It protects by declaring and enforcing rights, duties and obligations of the individual, of the group and of the State, according to law. This is done by upholding the law in resolving disputes or controversies between citizens or subjects and between the State and citizens or subjects, peacefully, fairly, respecting the dignity of the litigants, and where appropriate, exhibiting mercy. In so doing, the judicial power of the State is the civilised substitute for the gun and the gang.

But the nature of the power is not abstractly defined. It is experiential, to be described, not defined. When deployed or exercised, it is felt, emotionally, almost physically: as *justice* being done: at the sentence of the convicted person; at the pronouncement of the order for custody of the child; at the order of bankruptcy of the insolvent debtor; at the judgment for money that may cause financial ruin.

These deeply moving and sometimes, indeed often, harmful, acts must come from persons who are disinterested, fair, decent, human in character and appearance, yet aloof and abstracted to a degree, trusted and respected in wisdom and learning, with a recognition that they act selflessly, fairly and impartially, charged as manifestations of just State power, though with humanity that necessarily involves the possibility of human failing.

One can see from this *description* (not definition) of the person to wield the judicial power (human and fallible, but still a manifestation of just State power) another of the antitheses or opposites in the judicial task: the abstract and the human, hinting at the intertwining of the theoretical and the experiential.

Both the judicial task, and the judicial power involved within it, have a relationship with the society and the people they serve. That is one of the reasons why it is wrong to *define* judicial power or an element of it such that it denies to it the possibility of recognition in another society.
For the power to be judicial, however, and even though much is contextual, there still must be recognisable within it certain characteristics that give it its universality and recognisable commonality of qualities and features suited to the function.

The characteristics of the undertaking of the judicial task and the exercise of judicial power may take on different forms or hues in different societies. But they all have an indefinable call that resonates to, and is recognised by, the human condition – not only abstractedly or theoretically, in the mastering of the law and in understanding its

process, but also experientially and emotionally in its effect: producing the feeling that justice is being, or has been, done.

These characteristics illuminate the spirit of the task. It is, to a degree, abstracted: knowing the law, with its text, form and logic, thinking about and organising the evidence and rationalising the law to the facts. However, the spirit of the task also involves the manner of its undertaking. This involves the elements or qualities of judicial technique that can be described in human and experiential terms and which can inspire, even in the most cynical of litigants, a (perhaps grudging) respect for, and (at least residually) a trust in, the proper and decent exercise of the judicial power that is affecting them.

These qualities include skill, thoughtful learning born of study, diligence, reasonable despatch and efficiency, faithfulness to the text and meaning of the law, impartiality, fairness, a lack of anger or emotion, the application of reason and practical judgement, as well as courage when necessary, and an exhibiting of the respect and empathy for, and a recognition of the dignity of, all before the Court, which recognises the powerlessness and reduced position of all put into the position of the litigant – the dependence upon the judgement of others. When present, these qualities coalesce and conspire to deny the arrogance of position and the arrogance of power. The importance of all these qualities comes from the interrelationship all have between the human and the abstract.

The spirit of the judicial task (involving these qualities) does not come from high policy or grand expression; rather it comes from what must be done on a daily basis in the application of the law in life's small, sometimes selfish and mundane, intersections concerning people going

about their lives and businesses, where the elements to which I have referred assume a daily modesty in expression, and in context. But that modesty in expression and context reaches back towards the fusing of theory and law with the experientially human features of the exercise of the task to which I have referred. The spirit of the task comes from its modest application to the humans in question, to the conflicts in resolution, to the pages of the lives of people.

Given the nature and character of SIFoCC as dealing with commercial courts this discussion of the judicial task and its spirit might helpfully turn to commerce and commercial law.

One should not be too starry-eyed about the nobility of the middleman or trader. Yet, out of the, to a degree, selfish character of the search for commercial gain, one derives some of the most important and enduring conceptions in the law, such as the bargain, good faith and fair dealing, unjust enrichment, the unconscionability of the exorbitant bargain, salvage and general average, to name a few. Such is another opposite or antithesis embedded in the law.

More particularly, in an increasingly transnational and international world, commercial courts, in particular, are more regularly meeting questions of principle and judgement that require a balance of national interest and respect for, or at least consideration of, commercial parties and courts of other countries. The activity of commerce is international and, so, the character of commercial law for that activity must also be, to a proper degree, international.

Commerce can be seen to play an instrumental role in bringing otherwise isolated and disparate groups and societies into contact and

into relations. The growth in wealth associated with trade allowed (for better or worse, as the case may be) nations to expand beyond their existing territories and led to the foundation of new settlements. A moment's reflection upon the trading circles and routes spanning the world before European colonisation began in the 15th century would inform the necessary connection of habit, custom, law and reciprocity amongst North Asia, South East Asia, South Asia and the Sub-Continent, Central Asia, Africa, the Middle East, the Mediterranean and Europe, and the Baltic[4].

In order for commerce to grow, its participants needed to be able to deal with each other peacefully and with mutual benefit. Commerce was instrumental for the development of a modern public and private international law system and for the development of the broad and crucial, though not well defined, concept of comity. Comity has, from its beginning, been inextricably linked to international commerce, and indeed owes its very existence to the pressures and demands of commerce and of transnational trade. It is a doctrine built upon the recognition, as expressed by Ulrich Huber, that "*nothing could be more inconvenient to commerce and to international usage than that transactions valid by the law of one place should be rendered of no effect elsewhere on the account of a difference in the law*"[5].

This underpinning feature of the necessity for a proper degree of comity in the conduct of transnational commerce gives the commercial law that regulates international commerce its unique characteristic: That it is

[4] JL Abu-Lughod before European Hegemony: The World System AD 1250-1350 (1989) Oxford University Press; JL Abu-Lughod "The World System in the 13th Century: Dead End or Precursor?" Essays on Global and Comparative History (1993) American Historical Association.
[5] Ulrich Huber *De Conflictu Legum* as translated in Ernest Lorenzen *Selected Articles on the Conflict of Laws* (1947 Yale University Press) at 164-165.

the law *of an activity,* an international activity, and not just the law of a particular place or of a particular people or society.

Perhaps the clearest illustration of this is maritime law which can be seen as a distinct branch of the law rooted in maritime, and international commercial, *activity*. It is the law of maritime activity and of seafaring commerce. It was once placed by a great American professor, John Henry Wigmore in his beautiful work, *A Panorama of the World's Legal Systems*[6] as one of the 16 *legal systems* in the world. This was not antiquarian fancy; it was legal reality. Wigmore recognised that maritime law was not the law of a place or of a people, but a general body of law from shared common experience in facing the exigencies, risks and perils (human and physical) faced in the timeless activity of seaborne commerce. This led and leads to the formation of common principles, even if there are differences between individual national laws in their adoption and adaption of the common principles.

Ultimately, laws of societies grow from the roots of the group and of the place, and comparative law can be seen through the metaphor of a canopy of leaves and branches linking these different trees of national law growing from the earth of separate peoples and places. Maritime law and to a degree, international commercial law, are quite different. They are the law of maritime and commercial *activity* and of the humans who engage in it across the world. The metaphor of their manifestation is the rising of the springs of national law from the underlying stream of common principle below.

[6] Three Volumes: St Paul West Publishing 1928.

One of the most beautiful expressions of this came from Justice Jackson in the United States Supreme Court in 1953 in *Lauritzen v Larsen*[7]. He was dealing with the proper construction of United States seafarers' compensation legislation[8] and whether or not it applied to a foreign seafarer on board a foreign ship injured while the ship was in New York Harbour. The seafarer's relationship with the ship and ship owner was entirely framed by articles of employment, the proper law of which was the same nationality of the flag of the ship and of his citizenship. Justice Jackson, having referred to "a non-national or international maritime law of impressive maturity and universality", said:

> *"International maritime law in such matters as this does not seek uniformity and does not purport to restrict any nation from making and altering its laws to govern its own shipping and territories. However, it aims at stability and order through usages which considerations of comity, reciprocity and long range interest have developed to define the domain which each nation will claim as its own.*"

This reflects the practical reality of international commercial principle even when applied by national Courts. Involved in the conception of international maritime law is the recognition of a coherent body of rules and principles with roots and history in maritime commerce over centuries, recorded in Codes and decisions in many parts of the world. As such, it may not bind nation states of its own force, but it is adopted

[7] 345 US 871 at 581-582.
[8] The Jones Act

and adapted into national laws retaining its source and inspiration from the international maritime law.[9]

One can see from this that just as international commerce brings different societies together, so do shared international legal principles.

An example of these shared principles is the similarity of text of maritime codes and principles around the world. Thus maritime law is best taught, I found, not by focusing upon one particular nation's laws, but through a study of conventions, of codes from different countries and of common principles.[10] When teaching shipping law in Australia, colleagues and I taught from multiple codes and statutes to illustrate the commonalities and nuances of differences in national legal systems across the world. We particularly used the text of the Chinese Maritime Code and the Chinese Maritime Procedure Law. These were carefully drafted and carefully translated through the 1980s and 1990s under the guidance of the deeply scholarly work of the great maritime universities in China, in particular the Shanghai and Dalian Maritime Universities. These codes are of the highest quality and, translated into English, are works of elegant, balanced simplicity that capture the meaning and spirit of international maritime law and practice taken from prevailing international conventions and principles.

Thus, it must be appreciated that the societies and people that are served by the judicial task include those engaged in international commercial activity, including States, as well as merchants and traders.

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[9] *American Insurance Co v 356 Bales of Cotton* 26 US 511 at 545-546 (1828); *The Lottawanna*, 88 US 558 at 572-573 (1874); *The Tolten* [1946] P 135 at 142

[10] The finest illustration of this method of teaching is to be found in Tetley *International Maritime and Admiralty Law* (Les Editions Yvon Blais 2002)

I have earlier sought to emphasise that the importance of the judicial task and its spirit is to engender confidence in those who come before the court in the decision-making that will affect their lives and businesses. The nature of international commerce and international commercial law means that the task is not limited to engendering the *loyalty* of the citizen or subject of the particular country or polity served by the court, but extends to inspiring the *confidence* of all those involved in international commerce: to the foreign State or merchant or trader, to the stranger.

The spirit of the judicial task is the proper approach to the duty to succeed in *that* task. The importance of the task and its spirit is not just what is done, but how it is done. The process is both analytical and intensely human; it is both abstracted and experiential; it reflects a social or human bond between the State, manifested in the court, and the person, including the stranger, such as the international merchant or trader, who comes before it.

What then is the importance of international judicial dialogue? Why engage in it? In what way is it valuable? Is it part of the judicial task?
At this point, I need to indicate how I came to think about judicial dialogue. When I became Chief Justice of the Federal Court of Australia in 2013, I began to think more thoroughly than I had before about international judicial dialogue. Previous Chief Justices of the Federal Court had put in place relationships of bilateral dialogue and assistance with Courts of a number of countries: the Supreme Courts of Vietnam, of Indonesia, of Papua New Guinea, and Vanuatu; and with the Supreme People's Court of the People's Republic of China. Some were

more wide ranging in subject matter than others. Some focused on organisational and case management concerns; some involved mentoring younger judges; some, especially that with the Supreme People's Court, involved detailed exchange on subject matter of mutual interest, in that case, maritime and shipping law and practice.

Whilst some may have been viewed as the giving of assistance by one Court to the other, that would have been too narrow a lens properly to understand the nature of the relationship. All these relationships were deeply mutually beneficial in their aims and undertaking.

All these relationships involved resources – time and human resources, as well as precious Court funding. I asked myself: Why were we doing this? We have litigants before us who deserve our time; and the resources from the taxes placed upon all citizens should be devoted to that judicial task. The same question was sometimes asked of me by colleagues and friends. If one answered by reference to the benefits to Australia by some projection of influence or recognition, one could be met by the legitimate riposte that this was not the judicial task; it was foreign policy, soft power and influence, and so the domain of government of the day.

The answers to all the above questions as to the legitimacy of undertaking judicial dialogue should, by now, be seen to be found in an appreciation of the nature and the importance of the judicial task and of its spirit. No Judge can fully appreciate the nature and importance of what he or she does without appreciating how Judges of other countries, systems and traditions *undertake the same task*.

The exchange and the dialogue, bi-lateral or multi-lateral, brings out an appreciation of different perspectives, of the varied contexts of the same or similar problems, of connections, of common principles, and of common underlying values. This gives strength, or perhaps a basis to question, one's own system's principles and approaches, and equips one to approach the judicial task of reconciling all the opposites and antitheses, of which I have spoken, in a national and international context, taking proper account of reciprocity and comity, of the nature of the international activity, and of the content of international commercial legal principle.

Further, for a Judge or court to approach contemporary problems of the judicial task, whether of the development of legal principle or the preparation to meet new challenges, with a rejection of the need for an understanding of how colleagues around the world are dealing with these problems might be thought to be foolish or arrogant.

Let me illustrate by saying something of the programme for this Fifth Full Meeting.

The first theme of the meeting, Artificial Intelligence, is of great importance. AI will affect forever how the administration of justice is practically undertaken. It is essential that Courts engage with the science and technology in this area. Not to do so would cede to others a licence to masquerade as the only source of so-called 'accurate' decision-making, and to deny to the Courts the assistance they need in dealing with the choking thickets of digital information that envelop us in the digital world, which is only increasing exponentially.

That engagement will not, however, do away with the need for both the judicial task and its spirit. One might be able to have a machine mimic the judicial task and its embodied spirit, including in dealing with all the reconciliations of the task addressing questions with no necessarily correct answer; but that is hardly the point.

Nevertheless, how machine-learnt processes of abstraction and synthesis may affect and assist human engagement and justice are deep questions for the future. The notion of the complementarity of two ways of thinking: an AI way of thinking and a human way of thinking, mentioned by Colin Mayer and Simon Knowles yesterday, is of particular importance. Complementarity may give another perspective, perhaps as large as it did in quantum mechanics with Bohr and Heisenberg in 1927 in the Copenhagen Interpretation. The difficulty of grasping the boundary (if a boundary line is an apt conception) between human and machine judgement or thinking, and knowing whether it is one or the other, is perhaps not a world away from the co-existence and complementarity of waves and particles, and their changing by the act of measurement, and the necessary uncertainty inherent in quantum physics, ridiculed by Schrodinger and his posited cat in the box that could not be both dead and alive at the same time. Contemplating or reconciling opposites in physics is perhaps echoed in contemplating the opposites and antitheses in algorithmic prediction and mimicking, abstract and theoretical reasoning, and the human and the experiential reality of the whole. We are, after all, beginning to discuss human consciousness.

To try and find our way in that undertaking without intense and regular exchange with colleagues around the world, such as has already taken

place at this meeting, would doom the individual response to narrowness, provincialism, and likely inadequacy.

The second theme, developing the relationship between commercial Courts, arbitration and mediation simply cannot be addressed other than through dialogue with judicial colleagues, with arbitrators, and with mediators, from as many jurisdictions as possible. That dialogue is essential to the deepening of the understanding and strength of the *international justice system,* which is comprised of national commercial Courts, international Courts, arbitration institutions, arbitrators, mediation institutions, mediators, and the legal profession around the world.

This legal system, described so well by Chief Justice Menon in his keynote address at the last Full Meeting in Sydney in October 2022, is framed by one of the most important international conventions ever passed and adopted: the New York Convention on the Recognition and Enforcement of International Arbitral Awards, and also by the Recognition of Courts Convention, the UNCITRAL Model Law on Arbitration, the Singapore Mediation Convention, numerous soft law instruments and a non-binding, but extant, international maritime law and international commercial law.

The strength of the tissue of such a system depends upon regular dialogue.

The matters and subjects in the second theme are not capable of being fully discussed other than within an international meeting such as SIFoCC and in dialogue spawned by it.

The third theme of corporate activity and the rule of law throws up important issues in international commerce. Questions of a legal, moral and policy kind involved in the carrying on of business, including exploitation of resources in third party countries, the organisation of corporate groups and the responsibility of the parent and major corporate elements in the group for overall group behaviour will be fundamental to the development of a coherent remedial system in the coming century. Again, it is difficult to see how this can be properly addressed by Judges of one jurisdiction without understanding, from close dialogue, how other countries may approach the problem.

The fourth theme of greater international judicial co-operation is self-evidently a subject that can only be dealt with in the form of a meeting such as this. The importance of international judicial co-operation cannot be over emphasised. Working together, whether in parallel insolvency cases, or in working through competing claims to jurisdiction, and in understanding the quality of the work of other Courts and other Judges can only come from familiarity with the Judges of those Courts personally and institutionally.

Judicial dialogue is not only important to the law, but also it is important to understanding other systems. When Judges share their experiences, they learn and share aspects of the judicial task and its spirit that are often incapable of precise written expression. That helps Judges appreciate, from dialogue and from new perspectives gained thereby, the reality of the spirit of the judicial task and its indefinable character, as well as its importance.

I will finish by giving an example of a living embodiment of the spirit of the task which reveals its indefinable character. One of the greatest of Australia's legal scholars and Judges died last year, far too young. His name was Paul Finn. He was a well-published scholar and prolific judge, of great quality. Like all Judges of the Federal Court in the 1990s and 2000s, he had the task of dealing with a great many immigration cases – which were often hopeless in law, but always replete with human hopes and fears. In a beautifully written obituary, the following was recorded as the words of an Iranian applicant before Paul at the conclusion of a hearing about the refugee status of the man:

> "*It does not matter to me if I win or lose, as I sense that the Judge is a spiritual man, who treated me with such respect, that I know he will do what is right."*

This was a human recognition of the Judge's dutiful engagement in the task, in the process, that revealed to this man, with his intelligent insight, that something deep and important had taken place in his experience with, and of, the Judge. This is not imagined. It is the social bond of justice being manifested among, and recognised by, humans who come together in an act of supplication before State power and authority. It is a bond that is achieved by the engagement of a fallible human in the task of ascertaining and impartially applying the law in a careful, detailed and abstracted way and by the respect shown to the dignity of the parties. The Iranian man had the insight and poetic gift to express these things. Many litigants without such gifts nevertheless *feel* the same thing, even if they do not conceptualise it, or do not, or cannot, express it in language. Indeed, this experience emotes a feeling that often cannot

be expressed, otherwise than by the statement that justice has been done.

The proper execution of the judicial task and the spirit which the task embodies are essential for a just society embodying the Rule of Law and for the health of commerce, including international commerce and international commercial law. That the Iranian man's case was about his claim for asylum, not one about commerce such as one for breach of contract, does not deny the relevance of how he felt, to the expectations of all litigants before a court, including, but perhaps especially for our purposes today, the foreign State or merchant or trader before a commercial court: the stranger engaging in international commerce.

These matters lie at the heart of the importance of international judicial dialogue and of organisations such as SIFoCC in strengthening international commerce and international commercial law, in strengthening ourselves as Judges, and in strengthening relations across and between societies. This strengthening will come through recognising that the common task, which we are privileged to share, involves a spirit of an indefinable character, being one which engages human consciousness in the recognition of justice.

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