

*OPENING ADDRESS*  
by Hon. Sarath N. Silva, Chief Justice of Sri Lanka

I am indeed privileged by this invitation to be the Chief Guest of this Commonwealth Legal Education Association conference. This is the first occasion on which the Association has thought it fit to have Sri Lanka as its venue. When the invitation came our way we were indeed honoured that amidst all the problems that were confronting the country at that time, you yet thought it fit to hold both your Conference and the Commonwealth law students mooted competition in Sri Lanka. I must make use of this opportunity to commend the team ably headed by Dr. Joe Silva for putting a tremendous effort and making this a reality.

I think it is fitting that you have selected Sri Lanka as the venue for this Conference, because we have had a rich history of over one hundred years of legal education. I would say a consistent history of over a hundred years of legal education. In fact the Council of Legal Education was established by the Ordinance of 21<sup>st</sup> of March 1900. Throughout that period we have consistently engaged in legal education following a very steady and constant path. We have never deviated from that. Our commitment to the rule of law is personified by that commitment to legal education. Linked with legal education has been our court system. Our Supreme Court has had a history of 200 years. So whatever be the perceptions of Sri Lanka, as a peaceful country or otherwise, we can say that our commitment as far as systems go and as far as institutions go to the rule of law, the study of law and to the practice of law has been consistent.

There is another matter that I want to address. There is a perception, at least in some respects, that law and order in some parts of this country is not as it should be. I dare say there is some merit and truth in that. There is also another factor which is not known by the world at large, and I want to make use of this opportunity as I have done on other occasions as well to drive home that point. That is, whatever be the problems, we have got a court system, a system of administration of justice which functions throughout this country. The litigants come there with confidence and we are resolving the disputes with a firm commitment to the rule of law. That is something which is not very much known. I have to emphasize that it is indeed a redeeming feature. We have never failed in our commitment to the rule of law and the administration of justice within the framework of the law whatever may have been the problems that have been there. So, that is a positive feature. Another positive feature is that none of our judicial institutions and none of our judicial personnel have ever been the subject of any kind of improper pressure. This shows that all parties respect our processes. It is quite recently that I went to almost the war-zone area where we opened a new court house. I distinctly recall on the afternoon they said, "Now there is mortar fire. Sir, it is time for you to leave." But nevertheless the court functioned and it is yet functioning. So that is a tribute to our system and our commitment to the law. This is most significant. There is a way of resolving this dispute and all disputes within the framework of the law. I think that is the commitment that we require. A firm commitment to resolve all disputes within the

framework of the law and within the framework of the system of the administration of justice with a commitment to the rule of law. So those are our basic values. Those are the values which have built up our structures and those are the values that are going to make our structures more firm and longer lasting than the World Trade Center or any other center that may ever be built with human ingenuity. In that respect today's event is indeed a great event because we bring together to this country the richness of the Commonwealth legal education system. I see that there is a significant representation from all parts of the world. So we are proud that you have taken the trouble to come here and visit us at a time we need you most.

There are a few other matters on which I wish to dwell on. One significant feature is the commonality between South Africa and Sri Lanka. One word about the legal system on the whole. The main feature of the Commonwealth of nations, I would say, one of its principal assets is its foundation on the common law system. The Commonwealth of nations, almost all the countries - - I know there are one or two countries that are exceptions -- have the Common Law system as its basis. We rest on principles that have evolved to meet situations by judicial dicta. We have a high commitment to precedent. We have a high commitment to stare decisis, that is the structure of courts and binding precedents. That is how the law evolves in a common law system as opposed to the civil law system that operates in continental Europe, where the law is codified, and the judgments are brief and deal with facts. There may be pluses and minuses in both systems, but the need of the hour is not to see the distinctions. The need of the hour is to enrich ourselves through interaction as has happened in South Africa and in Sri Lanka. We have Roman-Dutch Law as our common law. We have had occasion to visit your great country. We know how Roman-Dutch Law has developed under the influence of English judges. Our Law of Contract and Law of Tort or Delict - whatever we call it - are really a mixture of the Roman-Dutch principles evolved under the influence of English law principles. So we have got a rich heritage which comes from a mixture, from a combination of two schools of law. We have to benefit from all systems and guide ourselves on the basis of international norms that are developing. It is very significant to note that now starting from the area of human rights and evolving towards the various finer aspects of the law of commerce we see international norms evolving. After the World War we had international norms evolving in the area of human rights under the UN Charter. We have had various developments in the area of human rights which are significant and which have safeguarded liberty throughout this globe. At the same time we evolved financial institutions under the Bretton Woods agreements. The IMF and the World Bank that came into being soon after the World War set the tone and pace for development of international financial institutions. Today we have got international trade institutions with the World Trade Organization that has come up. We have also got international institutions that monitor Environmental Law, Intellectual Property Law and many other matters. So we have got a growing body of international law that is now evolving. Now we have to interact with this international law in our local systems and this is the challenge of the law teachers. The law teachers of today and of the future have to now focus not only on national systems, not only on the history of

national systems but also the evolution of law in this newly growing international system, and evolve our legal systems so that they can survive the stresses and strains of the future that lie ahead of us. These areas are developing very fast and it is a burden of the law teachers to help judges develop them. It is a burden on you to see the parameters of these developments and put these developments in proper focus so that they can survive the test of time, the same way that common law principles have survived the test of time for centuries.

I will take no more of your time save to say that I commend very much the proposal of Dr. Silva to commence a branch association of the Commonwealth Legal Education Association in Sri Lanka so that we can continue with this rich experience which will benefit every one of us.

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