

Speech of Mr. Egbert Myjer, former judge of the European Court of Human Rights, delivered on 9 July 2015 at the event marking 30 years of CILC work

# The importance of CILC: some self-evident remarks

## CILC v. silk

What does an illiterate Queens Counsel (QC), the Cempaka International Ladies' School, Canadian International Learning Center, Convegno Italiano di Logica Computazionale, Center for Interactive Learning and Collaboration, Cambridge Immigration Legal Centre and the Center for International Legal Cooperation have in common?

As far as the illiterate QC is concerned: silk<sup>1</sup>; as far as the others are concerned the correct answer is: CILC.

But - apart from the Italian Convegno - almost everyone had to do with either learning or law. And the real CILC with both. The real CILC also has to do with (in the end) particularly eminent jurists.

If it were not for the teaching methods I picked up while lecturing for the real CILC: try to catch the attention of the audience with something unexpected or with useless but remarkable information, - I would probably have started the usual way by expressing my congratulations at the 30th birthday, and by then saying some words on why the work of the real CILC is so important.

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## From Raad to CILC

I will now do so, as far as the congratulations are concerned.

30 Years ago the 'Raad voor Juridische Samenwerking met Indonesie' (Council of Judicial Cooperation with Indonesia) was founded at the Initiative of the Dutch Government (development aid). It had its headquarters at the prestigious Rapenburg in Leiden. When talking about the 'Raad', I should immediately mention one name: Jan van Olden, who was the

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<sup>1</sup> As most of you thanks to Wikipedia will certainly know: **Queen's Counsel** (postnominal **QC**), known as **King's Counsel** (postnominal **KC**) during the reign of a male sovereign, are particularly eminent jurists appointed by letters patent to be one of *Her [or His] Majesty's Counsel learned in the law*. Membership exists in various Commonwealth jurisdictions around the world, while in some other jurisdictions the name has been replaced by one without monarchical connotations, such as "Senior Counsel" or "Senior Advocate". Queen's Counsel is a status, conferred by the Crown, that is recognised by courts. Members have the privilege of sitting within the Bar of court. As members wear silk gowns of a particular design, the award of Queen's or King's Counsel is known informally as *taking silk*, and hence QCs are often colloquially called *silks*. Appointments are made from within the legal profession on the basis of merit rather than a particular level of experience. However, successful applicants tend to be barristers, or (in Scotland) advocates, or solicitor advocates with 15 years of experience or more

secretary of the 'Raad'. The 'Raad' had several projects with Indonesia, like the setting up of a Dutch-Indonesian legal dictionary, a project on legal information, organising sandwich academic PhD-projects, courses on legislation and courses for the judiciary. Many prominent Dutch judges, academics and other lawyers participated in the project. After having returned from Indonesia they could always be recognised by their big hand carved wooden Indonesian nameplates, which mostly got a prominent place in their respective offices. In fact, those who at the time just had a normal nameplate, could almost be considered as a kind of losers who had proven that they did not belong to the real in-crowd<sup>2</sup>. They were never mentioned on one of the beautifully carved lists of participants of the 'Penatarans' at one of the Indonesian universities. It was only after the Dutch minister Jan Pronk had allegedly deeply insulted the Indonesian president Suharto, that in 1992 the latter threw The Netherlands out of the chair of IGGI (Intergovernmental Group on Indonesia) and put an end to Dutch-Indonesian legal cooperation. Thus the 'Raad' could no longer continue its fruitful and very important work in Indonesia.

Fortunately other possible projects elsewhere closer to home showed up. Following the breakdown of the Soviet Union and the communist regimes in Eastern Europe and given the immediate need for expertise in building up rule of law, CILC started to also support the legal reforms in the former Soviet Union and Eastern Europe. By the way: in Eastern Europe and the former Soviet Union other organisations, like the Dutch branch of the Helsinki Committee, were also involved in all kinds of projects on legal cooperation and capacity building. Still, those responsible for these organisations for the good cause found ways to cooperate apart together. The result was that, unlike what had happened with the 'Raad', Dutch judges, academics and lawyers, now the one time participated in Eastern Europe projects with UNDP or the Council of Europe, and the other time with the Helsinki Committee or CILC. When, in preparing my notes for today, I tried to reread in what Eastern Europe projects I had participated in the nineties, I found indeed the mentioning of UNDP, Council of Europe, Helsinki Committee and CILC. Experts now did no longer return to The Netherlands with Indonesian nameplates, but with big cards on which their names were printed in Cyrillic letters. And these new nameplates found their way in offices as well.

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For CILC, the brand-new Dutch Civil Code - I mention the name of Justice Wouter Snijders - turned out to be a perfect legal export article for new states, like Ukraine and Russia. In that respect I must also mention the name of Leiden (Russian law) professor Ferry Feldbrugge, who had the perfect insight feeling of what kind of legal cooperation might be needed in, what was then called, these new democracies. I also mention the name of Michiel Scheltema, who was involved in programmes on administrative law. Later on CILC also very successfully developed its Rule of Law project.

Since then, CILC has developed into a project organisation operating worldwide in international legal cooperation and rule of law capacity building<sup>3</sup>.

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<sup>2</sup> Except, of course, members of the Board.

<sup>3</sup> Institutions like the Netherlands Judicial Training and Study Center (SSR) were also of help. Eminent judges and public prosecutors participated in the programmes. Besides, the crème de la crème of the Dutch legal

Now CILC has its projects in other parts of Europe, in Africa, Asia and again in Indonesia.

And there is every reason to indeed congratulate CILC with its great work and the successful projects it has set up in the last 30 years.

## Importance, need and utility of the work of CILC

I am aware that your invitation for today's ceremony reads that you are invited to 'raise a glass with us to Netherlands international legal cooperation, about whose need and utility we will have the honour and pleasure to hear Mr Egbert Myjer speak'. Honour, forget it. Pleasure: I have already taken too long of your time and the drinks are much more pleasant. Besides, as far as the importance, need and utility of the work of real CILC is concerned, I feel a little bit embarrassed: why tell the self-evident to a well-informed audience which is already conscious of the fact? That is like telling a meeting of fans of the Beatles, why the Beatles were indeed the best.

Just tell them about the do's and don'ts of legal cooperation and legal capacity building, a dear colleague advised me. But that has just been done in a more than excellent interview with SSR director Rosa Jansen, which can now be read on the website of CILC: 'Legal Capacity Building as perceived through the eyes of an expert on CILC projects'. I could not agree more in what she mentions about 'exchanging expertise, legal capacity building: a constant reflection on your own system; once CILC, always CILC; fertile soil and receptive counterparts; and especially: Keep the receiving country in the driver's seat. Plus: the need for constant local subtitles; understanding the culture and context; a need to focus and establish a framework of aid for legal capacity building; where rule of law capacity building works; and on Dutch legal export products.

On the latter subject Rosa Jansen mentions:

*“I think we are excellent at training judges and prosecutors and I believe, together with Japan, we have the most elaborate initial training system in the world. The Netherlands has a long tradition in both initial training and permanent education in this field. In addition, our way of organising our courts, court efficiency and management of courts, in which judges are responsible for their organisation and in which we try to treat our cases in a very efficient manner, could be considered export products.”*

By the way: I wonder how that last line will be commented upon by the drafters of the well-known Leeuwarden Manifesto. The minimum is that that Manifesto will have to be translated into other languages.

## Training of judges and prosecutors

Let me just add a few words on training judges and prosecutors. I am aware that also here I am elaborating on the self-evident, but it may be of some utility. The need for professional training of judges, prosecutors and lawyers is expressly mentioned in basic (soft law) international documents.

Thus the UN Basic Principles on the Independence of the Judiciary (1985) stipulate that judges *'shall be individuals of integrity and ability with appropriate training or qualifications in law'*. *'Judges shall take reasonable steps to maintain and enhance (their) knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available'*, as stated in the Bangalore Principles of Judicial Conduct (2002). Further, judges should keep abreast of developments of international law. Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities, reaffirms that judges should be given *'theoretical and practical initial and in-service training entirely funded by the State'*, that meets *'the requirements of openness, competence and impartiality inherent in judicial office'*, as monitored by an independent authority. A report on judicial ethics by the European Network of Councils for the Judiciary (ENCI) describes qualities vital for a judicial position and emphasises the following, that is, what a judge should ideally do:

- improve his training in order to avoid any delay in the proceedings caused by a nonprofessional approach;
- maintain throughout his life the highest level of professional competence and
- use all the legal tools that he learns.

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Also the Magna Carta of Judges (Fundamental Principles) (2010) confirms that training for judges *'is a right and a duty for (them, and) is an important element to safeguard the independence of judges as well as the quality and efficiency of the judicial system'*.

The same applies to prosecutors. The preamble of the Guidelines on the Role of Prosecutors (1990) expressly mentions that *'it is essential that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training (...)'*. And in the text itself it says: *'Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognised by national and international law.'*

Also Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe to Member States on the role of the Public Prosecution in the Criminal Justice System, makes it clear that the training of prosecutors is great importance:

*'Training is both a duty and a right for all prosecutors, before their appointment as well as on a permanent basis. States should therefore take effective measures to ensure that public prosecutors have appropriate education and training, both before and after their appointment. In particular prosecutors should be made aware of:*

- a. the principles and ethical duties of their office;*
  - b. the constitutional and legal protection of suspects, victims and witnesses;*
  - c. human rights and freedoms as laid down by the Convention for the Protection of Human Rights and Fundamental Freedoms, especially the rights as established by articles 5 and 6 of this Convention;*
  - d. principles and practices of organisation of work, management and human resources in a judicial context;*
  - e. mechanisms and materials which contribute to consistency in their activities.*
- Furthermore, states should take effective measures to provide for additional training and specific issues or in specific sectors, in the light of present-day conditions, taking into account in particular the types and the development of criminality, as well as international cooperation on criminal matters.'*

Also the IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (1999), mention in Rule 1: *'Prosecutors shall (...) keep themselves well informed and abreast of relevant legal developments.'*

I will not mention all relevant texts, as far as lawyers are concerned. I just mention the Basic Principles on the Role of Lawyers (1990):

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*'Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of a lawyers and of human rights and fundamental freedoms recognized by national and international law.'*

It is for this kind of legal professionals that institutions like CILC are of utmost importance.

Let me share with you one experience: In the last month of my work as a judge at the European Court of Human Rights (October 2012), I heard that the president of the Republic of Moldova was about to pay an official visit to the Council of Europe and to the Court. Since I had been involved in a number of training missions in Moldova where my Moldovan counterpart was the then president of the Court of Appeal at Chisinau, Nicolae Timofte, I asked my president if I could be present at the ceremony where the Moldovan president visited the Court.

I now quote from the farewell speech the Court's president held a couple of weeks later, when I had my farewell reception:

*"Earlier this month the Court received an official visit from the president of Moldova, Mr Nicolae Timofte, whom you know through your work on training judges in that country on the convention. For me he had a polite handshake and a formal greeting. For you he had a warm embrace and the greetings of a friend, and words of thanks for your work in Moldova."*

I expect that a lot of those present here, have similar experiences: people with whom you worked in legal capacity building, and who later became the top people of their country. People, who are still grateful for the way legal experience was shared: with respect for their background and the local context. While keeping them on the driver's seat. Colleagues helping each other for a better future.

In the past 30 years CILC has done excellent work in this respect.

I started with the QC: in the UK taking Silk has to do with merits.

As far as legal capacity building is concerned: taking CILC has to do with merits as well. It is just the wisest thing to do.

That means: not the Cempaka International Ladies' School, or the Canadian International Learning Center, or Convegno Italiano di Logica Computazionale, or the Center for Interactive Learning and Collaboration, or the Cambridge Immigration Legal Centre. But only the real CILC: the Center for International Legal Cooperation,