TRIBUTE TO EDUARDO JIMÉNEZ DE ARÉCHAGA, JOSÉ MARÍA RUDA AND ANDRÉS AGUILAR MAWDSLEY

Keith Highet*

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* U.S. lawyer. Member of the Inter-American Juridical Committee.

I have been given the sad honor of addressing you today in memory of three great Latin American Jurists who are no longer with us. Amongst themselves, they combined the finest traditions of the Latin American School of International Law. Eduardo Jiménez de Aréchaga died following a tragic accident in Uruguay in the spring of 1994, just weeks after I had spent a month with him at The Hague working on the Bahrain legal team before the International Court of Justice. He was relaxing among his family and friends at Punta del Este.

Only a month or two later, following an exhausting participation in the Laguna del Desierto phase of the Argentina-Chile Boundary Dispute, relaxing with his wife in Spain, José María Ruda suddenly died of a heart attack. Finally, last fall and following a long and painful illness which he bravely fought against even in his last days as a Judge in the Court, Andrés Aguilar died in The Hague.

Thus, in the space of only a year and a half, three of the great figures of contemporary Latin American international law have passed away. Two are from the Southern cone and one is from the Caribbean North of South America. Each represents a tradition of the lawyer-diplomat and the particular blend of international civil servant and national delegate that has so long marked the participation of the great statesmen of the Latin American Republics in international life.

The life of **Eduardo Jiménez de Aréchaga** is well known to all of you and has been celebrated many times since his untimely death. For years he was a Professor of great distinction in his native Uruguay. He served Uruguay and the international community brilliantly as Member and Chairman of the International Law Commission, in particular in the United Nations Conference on the Law of Treaties. He was a member of the International Court from 1970 to 1979. He served as its President from 1976, and as Judge *ad hoc* in many cases since his departure from the bench. He was President of the World Bank Administrative Tribunal. He was Counsel not only for Spain in the *Barcelona Traction* case in the mid-1960's, but also for El Salvador in the *El Salvador/Honduras* case, and for Denmark in the *Great Belt* case with Finland and the *Jan Mayen* case with Norway —all in 1980's and early 1990's. His active career ended as Counsel to Bahrain in the jurisdictional dispute with Qatar, decided only a few months after his death.

He was also President of the Arbitral Tribunals between France and New Zealand in the *Rainbow Warrior* affair, as well as of the Arbitral Tribunal between Canada and France in the case concerning delimitation of the maritime zones around the islands of St. Pierre and Miquelon.

The extent of his writings and the devotion of his students need not even be mentioned here; so great was his effect on so many. Of course, the backbone of his work and his point of departure was as Professor of

International Law at the Montevideo Law School for the twenty-five years between 1946 and 1969. His ground-breaking and original study, *Derecho Constitucional de las Naciones Unidas* (1958) was the first general work of its kind and was long his favorite of his many treatises and books. His international career was only matched, in the 1950's and then again in 1968, by national service on the highest levels in Uruguay.

He had served as Judge *ad hoc* for Libya in a number of cases in which I had the honor to plead before the Court, notably the *Tunisia/Libya Continental Shelf* case, the *Malta Intervention* and the *Libya/Malta Continental Shelf* case. He was also the first former Judge to serve as Counsel in a variety of cases, following his retirement. The one where I was in closest contact with him was the *Land, Island and Maritime Dispute* case between El Salvador and Honduras (Nicaragua intervening), also known as *The Gulf of Fonseca* case. Here he bore the extraordinarily heavy burden of being obliged to argue all six of the land boundary questions to the Chamber. This took him almost a month of pleading and was an occasion for the highest art of the international advocate.

Judge José María Ruda of Argentina also served as President of the International Court, from 1988 to 1991. He worked on the International Law Commission at the same time as his friend and colleague from Uruguay, Dr. Jiménez de Aréchaga, and also as its Chairman from 1968.

He, too, had served as counsellor of public international law. His basic formation was in the Office of Legal Affairs of the United Nations, in which he served in the early 1950's —as I recall, together with Eduardo Jiménez de Aréchaga, at the beginning of the most important years in the world organization. He later rose to the top ranks of the Argentine diplomatic service.

He also had a long and distinguished career as an international judge. He served as a member of the Chamber in the intricate *Frontier Dispute* case between Burkina Faso and Mali in the mid-1980's. He served as President of the Court from 1988 to 1991. He continued to sit as a regular judge when Don Eduardo became a judge *ad hoc* in the Mediterranean continental shelf cases of the 1980's, and when I also had the honor to appear before them both. He was also President of the Chamber in the case of *Elettronica Sicula (ELSI)*, in which he served ably as the President of the Chamber and in which I again had the honor of being Counsel, this time to Italy. At the time of his death he was serving as Judge *ad hoc* for Qatar in the *Qatar-Bahrain* jurisdictional dispute, in which Eduardo Jiménez de Aréchaga and had also served as Counsel.

He was President of the Iran-United States Claims Tribunal in 1991 and served in that capacity for several years, turning his attention to private disputes with Iran in a fixed and institutional arbitral setting.

In the period of the sixties and the seventies, Judge Ruda was the delegate of his country on a wide series of international agreements relating from the Vienna Convention and Consular Relations, to the Friendly Relations

Committee, and to the Vienna Convention of the Law of Treaties. He was also active in the early phases of the Third Conference of the Law of the Sea, notably the Sea-Bed Committee work in the late 1960's.

Judge Andrés Aguilar Mawdsley began his career, yet again, as Professor of Law at the Central University of Venezuela and Andrés Bello Catholic University, becoming Vice Director of the latter institution in the early 1960's. He served as Minister of Justice of his country, as Legal Counsel to Petróleos de Venezuela, and counsel in a variety of senior positions in his government and internationally. He was always deeply involved with human rights issues and issues concerning the law of the sea.

He was Venezuelan Ambassador to the United Nations Office in Geneva, President of the International Labor Conference, and Permanent Representative of Venezuela to the United Nations on two separate occasions —two decades apart. He was Venezuela's representative to the United Nations Commission on Human Rights and also served as its Chairman. He was Ambassador to the United Nations and the United States, and was Member and President of the Inter-American Commission of Human Rights throughout the 1970's and until the mid-1980's. He headed Venezuela's delegation to the Third Conference on the Law of the Sea and was intimately concerned with that discipline.

Judge Aguilar was elected to the Court in 1991. In assuming his seat on the Court, Judge Aguilar became the only remaining Latin American Judge on this body of fifteen jurists —the seat occupied by the Brazilian jurist José Sette-Camara having been taken by Judge Mohammed Shahabuddeen of Guyana in 1988. Although South American, Judge Shahabuddeen was not Latin American.

You will recall that Article 9 of the Statute of the Court requires that the Judges should not only individually possess the qualifications required, but that as a whole "the representation of the main forms of civilization and of the *principal legal systems* of the world should be assured." One of the principal legal systems of the world is surely that derived from the Roman Law and the Napoleonic Codes, expressed today in the Civil Law Systems common in most of this hemisphere. The States which contain such systems have also made particular contributions to the interpretation and development of international law, from the earliest date of independence early in the 19th century to the most recent times. In many ways that tradition is carried on today and is embodied by the majority of members of the Inter-American Juridical Committee, upon which I am proud to serve as a representative of the legal traditions of the United States of America. However in the opinion of some there is at present an imbalance in the composition of the Court. The United Nations, which controls elections to the Court, has in effect substituted the "equitable geographical representation" standards of the 1960's and 1970's for the "principal legal systems of the world" standard contained in the Statute and

which goes back to 1921. The result of this is at least to make the role of the Latin American jurist on the Court more important than ever today.

Latin American legal doctrine —and in particular its concern with questions of State sovereignty, with cooperation and codification, and with questions of intervention, has been particularly important throughout the world since the early nineteenth century, and Latin American jurists have notably taken the lead in establishing new principles which have assisted greatly in the development of public law for more than a hundred years. The three men of whom I speak today were very much in that great Latin American tradition, which is far weaker for their departure. The places won by these three great practitioners, scholars and Judges will take years to fill.

Although there are many scholars and publicists in this hemisphere who are worthy of distinction and who will rise to do this, it is to your generation that we must look. Here, in the Twenty-Third course on International Law sponsored by the Inter-American Juridical Committee, outstanding young students from all over the hemisphere are invited to Rio de Janeiro for a month's study in continuation and development of their careers as students of international law and as international lawyers.

It is from you, and your predecessors in this course, that we in the Americas will seek future leaders to embody the Latin American and hemispheric traditions in public international law. It is you who must try to take the places of these three great jurists. Were they present here with us today, I know that each would welcome you all, and would encourage you in pursuit of your interest in international law.

One point must be made here about international law as a career, and another point must also be made about some of the key ingredients in such career. Both are amply illustrated by the three jurists whom we commemorate.

First, for those of you from normal backgrounds, who have worked hard to achieve a legal education and who are now contemplating international law, let me say this. It may seem, even as you sit here in Rio at the outset of our course, that this subject is a luxurious endeavor: an academic or idealist pursuit which cannot result in the practical benefits you require in order to make ends meet and hold down a steady career. The need to maintain a normal productive practice, to follow established and orthodox career paths, and to make practical choices in the private practice of law —all these problems exist, and we must always heed them.

But note that each of these three men achieved the highest levels of distinction, starting on relatively simple terms, in the academy or in government service. Each of them, by his own hard efforts, rose from the ranks to achieve early recognition and significant responsibilities representing his government in international councils. Each became an internationalist in practice as well as in doctrine. Each then became a public international civil servant at the very highest level possible.

The message is that there is hope. International law as a career is not solely an academic choice. It has practical implications and it has promise for a rich and varied career. Service in this field is not merely interesting: it is also a way of satisfying one's own patriotic desire to serve one's country and, even beyond that, one's idealistic desires to benefit the international community and to bring a little bit closer a world where nation States may live in harmony in a positive era of peace and stability, and where disputes among State may be resolved by peaceful and constructive means.

All of these are open to you, as students of international law. We hope that the experience you will share here at the XXIII Course in International Law —the things you will learn, the friends you will make, the people you will be exposed to, and the voices that you will hear over the course of the next month— will go far to crystallize and make more permanent your own interest in international law as a subject, and your own ambitions in international law as a career.

These three great jurists had such careers. With work, application, good judgment and a little luck you can too, and you can fall in line to swell the ranks of Inter-American jurists who will follow on in their footsteps.

My *second point* relates to in some of the key ingredients in the career of international law. I believe that this is applicable to diplomatic and public service on delegations and in international organizations —and to service as an arbitrator and as a judge— as well as to the actual "private" practice of international law (both public and private) as a counsel.

One must remark that, in the field of international law, there are necessarily fewer guideposts and measuring-rods by which a lawyer's intellectual abilities or skills can be measured, when compared to the internal practice of domestic law. It may be easier to evaluate a counsel advising on a local municipal mater than it is to assess an international adviser.

As Professor Dupuy found in the *Topco* case twenty years ago, the international contract exists in a world of its own, subject to international law rules which have existence beyond the limits of national jurisdiction. These observations may readily be transferred to the practice of international law itself.

Just as the international law contract —say an agreement between a State and the World Bank in which a business corporation is also involved— exists in a curious legal limbo of its own, beyond the national categories of domestic jurisdiction, but below the rank of purely inter-State public agreements on the treaty level, so does the practicing international lawyer work and exist to a large extent in a gray area beyond the bright light of a more limited national context. When such a lawyer is pleading before that highest of tribunals, the International Court, he or she is still acting in a zone which is beyond, or above, the normal frame of reference for domestic lawyers and attorneys and counsellors at law.

How does such a lawyer get judged? Of course, in many ways by the success or failure of his or her interventions. But also for that lawyer's ability to communicate from culture to culture, from State to State. One cannot address a Court of fifteen judges representing the principal legal systems of the world, with the same experience and custom as one would apply to one's own country and one's own well-known jurisdiction. What then is most important before such a body of judges?

Obviously, the message is the most important element. How does one get one's point across? It should come across simply, and directly. It should be understood by the Chinese judge and the Russian, by the Sierra Leonian and the Sri Lankan, by the French judge and the English. The argument must make sense to the Latin American tradition, and to the tradition of the common law, and to many hybrid traditions between us.

This will of course require a refinement, if you will, of the normal arts of advocacy. The international advocate must be *more* effective than almost any domestic advocate. His or her job is tougher: the audience is more diverse, and more difficult to get to.

For this, substantial skill and a balance are required. The first thing to be learned is that one can never stop learning. Even with the experience of many cases, there is always more to learn, and every case is a whole new horizon.

Not only this: one must learn how to frame a legal argument convincingly and well. This becomes more difficult, not less difficult, the older one gets. The reason is that older lawyers become set in their ways. Yet to be an effective international counsel, one must *not* be set in one's ways: one must do the very reverse.

But the most important quality of all is intellectual honesty. I therefore leave aside the obvious qualifications of legal talent, and ability to analyze problems and present solutions. Behind all of these abilities lies the key issue of *integrity*. Do fifteen judges from diverse and differing legal systems believe what you are saying, or do they not? If you can achieve this then you will have gone far. If you once lose this —if you are caught out in a bad argument, or if what you say cannot be relied on by the judges— you may never regain it.

Thus at the heart of the practice and discipline of public international law, so divorced from the normal accepted rules of domestic practice, lies not merely the need to be an effective communicator, but the requirement to be a convincing one. And behind that, again, lies the simple common-sense rule that your intellectual integrity is the most important talent that you will have to share. It is part of your reputation, your good name. If it is lost, it may be lost forever.

International law will grow and develop when men and women of talent can devote themselves to its practice, and will grow and develop the best when such a devotion is accompanied by a convincing show of intellectual honesty

and legal integrity. We must understand how important are the basic issues of personal character and intellectual integrity.

And it is in the *lives and careers* of these three great Latin American jurists that one can see how this rule has been applied. Each of the three possessed what the English refer to as a "sterling character." Each was a scholar, a gentleman, and a friend. When they spoke, their colleagues believed what they said. When they pleaded, their arguments were convincing. When they judged, their judgments were solid and straightforward.

This is a hard legacy to follow, and a tough role to fill. But it can be done. Each of these three men did it himself, from the beginning to the end. And you can do it too.

An old friend of mine, and also an old friend of our three departed friends, was the late Richard Baxter, Professor at the Harvard Law School, my teacher, and also a Judge on the International Court for a tragically short time in the late 1970's.

In 1976 he gave a speech at the Association of the Bar of the City of New York in which he addressed the question of succession in our field. I can find no words more fitting than his to close my remarks on these three great Latin American Judges.

Speaking twenty years ago about international law training in the United States, Professor Baxter (as he then was) said:

> "Many institutions in this country hired specialists in international law and in comparative law shortly after the Second World War, when the law schools resumed their normal pace. A whole generation of these individuals were retired during the decade of the 1970's. Universities —law schools in particular— are looking about for their successors, men and women in, say, their thirties, who are desirous of following an academic career. What is being looked for is an excellent general knowledge of the law, high competence in international law, some practical experience, teaching ability, and published writings which give evidence both of intellect and of scholarly interest.
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> For all of the tremendous educational program that was mounted in the 1950's and 1960's, for all of the money that was poured into international legal studies, there are few —very few— individuals who fall within the range of consideration. We are not producing the requisite number of young scholars that we ought to be bringing along into senior teaching posts now.
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> Now in saying this I want to make it clear that I have already discounted the tendency of aging professors to ask, petulantly: `Where are our successors coming from? Who can possibly replace me?' Successors will be found and they will not be worse than the departing generation;

but many of them will still not meet the standards we can properly expect for teachers and scholars in our own field.

My own generation has not necessarily been a model of scholarship. I am reminded of the two lines, the origin of which I cannot presently recall, although the two lines do stay in my mind:

`Where's Mortimer, where's Mowbray? Nay what is more and most of all, where is Plantagenet? They are entombed, in the urns and sepulchers of mortality.'"