



# THE BULLETIN



## RENEWING FRIENDSHIPS AT THE 2013 SPRING MEETING IN NAPLES, FLORIDA

*Nearly 800 Fellows and guests joined for fellowship at the Naples Botanical Gardens for President Varner's Welcome Reception*

See article on page 2 >>

# LOUISE ARBOUR RECEIVES GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY

Past President John J. (Jack) Dalton introduced Louise Arbour, President and Chief Executive Officer of the Brussels-based International Crisis Group, to the Fellows assembled in Naples, Florida, for the College's 2013 Spring Meeting. Arbour was no stranger to the group, having been inducted as Honorary Fellow of the College in 2003 when she was a Justice of the Supreme Court of Canada. However, it was Arbour's work on the International Criminal Court that drew the attention of the Griffin Bell Award for Courageous Advocacy Committee.

Excerpts of Jack Dalton's remarks:

The Award was created in 1964, but in 2008, the Board of Regents re-named the award ...in honor of Griffin Bell of Atlanta, a distinguished advocate and a leader of this College. Judge Bell was an advocate. He was a soldier. He was a President of this College. He was a judge of the Fifth Circuit Court of Appeals. He was the people's lawyer, as Attorney General of the United States. The Board of Regents felt that re-naming the award was a fitting way to acknowledge a true leader of the College.

Our process for conferring this award is arduous, and it is thorough. The guidelines say "this award should be reserved for the truly exceptional candidate, whose record leaves no question that he or she should be given the award." As trial lawyers, we understand and appreciate the intense personal commitment, sacrifice, and courage necessary to sustain the extraordinary advocacy that our recipient has demonstrated. In its forty-nine years of existence, the award has been extended previously only thirteen times, indicating the significance and the gravitas of this award in the eyes of the Board of Regents. Today, presentation to the fourteenth recipient, Madam Louise Arbour, will be the first time this award is extended in the name of Judge Bell.



President Varner, Ms. Arbour, President-Elect Kessler

### JUSTICE ARBOUR ACCEPTS THE HONOR

Ladies and Gentlemen, I am extremely honored to be here. I come to you, as was mentioned, from the Kingdom of Belgium, where I currently reside and work. I am here to accept this amazing recognition for work for which many people share the credit, including many then-young American lawyers seconded to the enterprise when I was a Chief Prosecutor.

Some of you may be aware of the work that I did on the international scene, but I thought you might be interested in my early judicial work. As a judge in Canada for some fifteen years at all levels of court, I dealt with lofty concepts, such as democracy, federalism, protection of minorities, rule of law, reasonableness, proportionality, participation, accountability, balance, rationality.

But I also dealt with more down-to-earth matters, like the malfunctioning of a John Deere tree harvester, the ownership of a tunnel between Canada and the United States, the illegal raising and selling of chickens in violation of quotas set by the Chicken Marketing Board. I struggled with issues such as a prisoner's right to vote, the integration of children with severe disabilities in mainstream public classrooms, the constitutionality of Canada extraditing people to face the death penalty in the United States, remedies for the imposition of criminal interest rates, and the legality of ten dollar lap dances.

So, when it came to indicting Slobodan Milošević, then President of Serbia, I was very well prepared, indeed.

### PEACEMAKING THROUGH PROSECUTION

From my early days as a law student, a law clerk in the Supreme Court of Canada and then a law teacher, I have always been particularly interested in criminal law, and the work I do today, to some extent, reflects my lifelong interest in the fine lines between deviance and non-conformism, between confrontation and accommodation, power and abuse of power, liberty and security, good and bad.

The prosecution of war criminals in the former Yugoslavia and in Rwanda in the mid 1990s was an unprecedented effort to seek justice as a form of peacemaking. It was a surprisingly imaginative initiative by the Security Council of the United Nations to expand its conflict resolution toolbox, probably in despair that so little else had worked to stop the carnage.

And yet today, we continue with the same sense of impotence, to see low-intensity wars raging in many parts of the world, and to despair at our collective inability to stop the slaughter, perhaps more pressingly now, but not exclusively by far, in Syria.

Many are calling for Bashar al-Assad, the President of Syria, to be indicted by the International Criminal Court. Others argue that tyrants and dictators responsible for atrocities should be given amnesties if that is the price that must be paid for their departure.

Well, history has shown that peace built on unredressed grievances and injustices is unlikely to be lasting. We have not yet overcome the impasse



History has shown that peace built on un-redressed grievances and injustices is unlikely to last.

*Louise Arbour*



that comes from offering only threats of punishment, not rewards to those on whom we must rely to settle the peace.

The tensions between these two legitimate aspirations, to peace and to justice, can only be accommodated in a contextual fashion, and without elevating either as an exclusive absolute. Everything, in my view - peace, justice, truth - can be either pursued with too much zeal or abandoned at too high a cost.

Almost twenty years since it was resurrected from the ashes of Nuremberg, the international criminal justice system is, I think, in need of fresh doctrinal, institutional and operational insights. In my view, it needs to be severed from its early political roots in the UN Security Council; the legal principles that govern personal criminal accountability of military and political leaders for war crimes, genocide and crimes against humanity should not be subservient to political imperatives.

And yet, the political maturity that has sustained the separation of powers and the independence of the judiciary in our democracies is not easily transferable to the international environment where the principles of state sovereignty still reign and where foreign policy is guided almost exclusively by the pursuit of national self-interest.

### **COURAGE COMES FROM CLARITY**

In operational terms, the early years of the International War Crimes Tribunals were enormously challenging. We had to investigate massive crimes with hundreds of victims in foreign countries whose languages most of us did not speak and with none of the traditional investigative tools we're used to, such as search warrants, wiretaps and existing networks of informants. Using a mix of criminal procedure rules woven together from different legal systems, we

worked together, international lawyers and criminal lawyers, civil law and common law-trained, few with any expertise at the outset in the laws of war and military doctrine and practice. We targeted powerful and unscrupulous people and we conducted massive forensic operations opening mass graves containing hundreds of bodies with the help of pathologists, anthropologists, archaeologists, and even botanists who could then determine whether the grave was an original one or a secondary reburial site.

I would be asked on a typical day by my fellow lawyers and investigators to decide whether our investigators could wear a body pack to surreptitiously record an interview with a potential witness in Malta or in Cyprus, what our position should be on what constitutes widespread or systematic killings, whether the mens rea of genocide should be fully subjective, and whether we should take the view that the illegality of an arrest does not affect the jurisdiction of the court.

More than anything I have done in my life, in these early days of international war crimes prosecution, I believe that courage comes mostly from clarity. If I was afraid of anything, I was afraid above all of making a big mistake.

In the other institutional environments in which I have worked, there were more opportunities for guidance and more possibilities of redress. And there were, therefore, fewer risks, physical ones included.

### **INTERNATIONAL CRISIS GROUP**

I look to the future of this amazing enterprise with optimism, and I wish the same sense of excitement and accomplishment to those who are moving it forward today.

My work in Canada, first as an academic, then as a

judge, is largely the product of the feminist movement of the '60s and '70s, and of the liberalization of society that followed. The impetus for the kind of change reflected in my professional life is rooted, I think, in the Canadian Charter of Rights and Freedoms, which launched in 1982, a true culture of rights, anchored in ideals of equality and fairness. My international work was a natural extension of these ideals.

After moving from international criminal justice to the broader field of international human rights, I took a dramatic plunge into the unknown to join the International Crisis Group. Crisis Group is a non-governmental organization whose mission is the prevention of deadly conflict. It has intellectual rigor, ethical grounding and practical applications.

And I will pause here, if you will indulge me, shamelessly, to plug this remarkable organization I am very privileged to lead. We are only a hundred and fifty of us. Many of my colleagues are the most remarkable, principled, courageous people, feisty people I have ever had the pleasure of working with. They are on the ground. We cover some fifty conflict situations worldwide. We are totally field-based, and as I speak to you today, we have staff in Kabul, in Jakarta, in Bogotá, in Johannesburg, in Nairobi. We work in Somalia and all kinds of places unreachable for most, including, unfortunately, for many journalists.

From that field work we produce detailed analytical and prescriptive reports on conflict situations, ranging from the well-known conflicts in Syria, for instance, or Mali or the Congo, to some of the less well-known conflicts, such as those raging in Southern Thailand, Nagorno-Karabakh or the Gulf of Guinea. Our work is a reference for decision-makers, largely because we believe that if you don't

have command of the facts, you will probably end up in the wrong place. To that extent, I think we are not unlike lawyers. However, we are an entirely non-profit organization, which, to some extent, distinguishes our work from that of what others do. We put all of our work product in the public domain on our website, and we genuinely believe, in a slightly pretentious way, I suppose, that we are there advancing an international public interest in the peaceful resolution of conflicts. We are supported financially by governments and the private sector in the very best tradition of cutting edge American philanthropy.

Even though Crisis Group is for all these reasons a very comfortable and familiar environment for me, I am very conscious that I have now, to a large extent, abandoned the law, which has been my comfort zone and an intellectual framework for my entire career.

I have also abandoned the formal institutional environments in which I spent my entire life: The convent school, the courts, the United Nations. I wore a uniform until I was twenty years old and ready to go to law school. I swore I would never wear a uniform ever. Then I became a judge and I wore a uniform again for the next fifteen years. In retrospect, I think I clearly like the anonymity of it all and, particularly, the sense of belonging.

I travel very broadly and very frequently. When I am asked to fill out a customs and immigration form, I always pause at the question, "What is your occupation?" Although I am the President of International Crisis Group, somehow I find "president" both pretentious and non-descriptive. So I always write "lawyer."

Thank you very much for validating today my true sense of identity. ■

The tensions between these two legitimate aspirations, to peace and to justice, can only be accommodated in a contextual fashion, and without elevating either as an exclusive absolute. Everything, in my view - peace, justice, truth - can be either pursued with too much zeal or abandoned at too high a cost.

*Louise Arbour*

# GRIFFIN BELL AWARD FOR COURAGEOUS ADVOCACY AS PRESENTED TO LOUISE ARBOUR:

*Never content with maintaining the status quo, throughout your distinguished career you, Louise Arbour, have demonstrated independence, courage, perseverance and a love of freedom, often in the face of substantial opposition.*

*By the time you were appointed Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, you had already established a record in Canada as a champion of civil liberties and basic human rights, first as the Vice President of the Canadian Civil Liberties Association and later, as a Judge at the Ontario High Court of Justice and the Ontario Court of Appeal.*

*On the international stage when you assumed the challenging position of Chief Prosecutor for the International Criminal Tribunal in Yugoslavia, your devotion to human rights and to individual freedoms faced its greatest test. You launched a hands-on, proactive campaign to indict and prosecute war criminals and perpetrators of human rights abuses and genocide. You enforced the rule of law and insisted on accountability in international criminal proceedings in the former Yugoslavia.*

*Your work as Chief Prosecutor for the International Criminal Tribunal was both creative and courageous. The International Criminal Tribunal was solely dependent on NATO forces to carry out its arrests. NATO's member states expressed concern that war would break out if their forces were perceived to be actively engaged in apprehending indicted fugitives. With lit-*

*tle or no will by NATO's member states to cooperate in the arrests, the Tribunal's credibility and the enforceability of international criminal laws was in danger.*

*You made the decision to personally deliver sealed indictments and warrants to the NATO commanders. You advised the commanders that the named individuals were to be arrested when encountered. Your actions produced tension at the highest levels of government and the military in NATO countries. Despite pressure by various NATO members to cease your pursuit (including a meeting with the United States Secretary of State), you refused to yield. You responded that you had been appointed to carry out your mandate as independent prosecutor and that you intended to do so.*

*You brought the first indictment in history against a sitting head of state, then-Yugoslavian President Slobodan Milošević. You did so despite a lack of support from governments who feared the impact the indictment might have on Milošević's supporters.*

*You negotiated with senior government officials in Great Britain, the United States, and France. You endured severe criticism and negative publicity in all three nations.*

*You refused to surrender to public pressure and intimidation. You successfully challenged the reluctance of NATO countries to instruct their military forces to serve the sealed indictments.*

*Your strategy and perseverance succeeded. As a result of your efforts, the fugitives the Tribunal had indicted were arrested. The credibility and effectiveness of the*

*International Criminal Court were restored and enhanced.*

*Your pursuit of recognized war criminals and perpetrators of human rights abuse and genocide in the former Yugoslavia endangered your personal security. You engaged in a “stand-down” with border guards as you attempted to enter Kosovo to pursue an inquiry into the massacre of forty-five people. When denied entry and despite warnings of security advisors, you personally confronted the border guards to obtain entry.*

*As Chief Prosecutor in Rwanda, your perseverance resulted in the exposure of substantial evidence of atrocities leading to the successful prosecution of sexual assault as a crime against humanity.*

*Your commitment to justice and freedom continued after you left your role as Chief Prosecutor in Yugoslavia and Rwanda. You have served as Justice of the Supreme Court of Canada, and you were then appointed as United Nations High Commissioner for Human Rights, where you continue to promote human rights and to champion freedom of speech.*

*As you have pursued important international causes, you have endured harsh criticism, ex-*

*treme political pressure and great personal sacrifice. You have passionately defended the rights of those unable to protect themselves. You have spoken for human dignity by prosecuting abusers of human rights. You have demonstrated an unwavering and brave commitment to freedom and justice for all citizens.*

*We honor you today by bestowing one of the most prestigious awards given by the American College of Trial Lawyers. As trial lawyers, we understand and appreciate the intense personal commitment, sacrifice and courage necessary to sustain the extraordinary advocacy that you have demonstrated. In the forty-nine years since the initiation of this award, you are the fourteenth person upon whom it has been bestowed.*



*In recognition of your outstanding courage and perseverance in the prosecution of perpetrators of human rights abuses as Chief Prosecutor for the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, in the face of personal danger and substantial international pressure, the Past Presidents, Regents and Fellows of the American College of Trial Lawyers proudly confer upon you, Louise Arbour, the Griffin Bell Award for Courageous Advocacy, this 2nd day of March 2013, in the City*