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**REPORT FROM THE ROUNDTABLE:
JUDGES AND PEACE OPERATIONS**

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On March 9, 2001, the Canadian Centre for Foreign Policy Development, in partnership with the Honourable Madam Justice Ellen Macdonald, brought together judges, government officials, and NGOs to address the involvement of judges in peace operations. The roundtable built on an earlier, broader discussion about "Expert Deployment to International Peace Operations" (September 12, 2000) and on the work of Justice Macdonald in promoting a more systematic international involvement of Canadian judges. Participants included the Honourable Justices Peter Howden and Derek Guthrie, the Honourable Judge Ross Goodwin, Adèle Bertiaume (Department of Justice), Diane Elkas (Commission for Federal Judicial Affairs), Debbie Bernard (CANADEM) and Patrick Ulrich (Regional Security and Peacekeeping Division, DFAIT). Steven Lee (Canadian Centre for Foreign Policy Development) chaired the meeting.

The Roundtable report is divided into three sections:

1. **Context and Challenges** - looks at why Canadian judges should become more involved abroad and outlines main challenges.
2. **Creating a Framework** - outlines what is required to systematise the involvement of Canadian judges abroad.
3. **Next Steps** - identifies steps necessary for the initiative to take off.

1. Context and Challenges

During the Roundtable on *Expert Deployment to International Peace Operations* (September 12, 2000), participants endorsed the idea that justice is one area where Canadian expertise could be useful to peace operations. The report states :

There is a broad agreement that (re)establishing the rule of law is a key element of peacebuilding. Building fair and functional judicial and legal structures, promoting confidence in how justice is administered, and so on, are considered key to building democracies. Canadians are in a position to help since their judicial and legal systems are highly regarded abroad. Moreover, Canadians are perceived as modest and sensitive to diverse cultural and socio-economic contexts.¹

¹The Canadian Centre for Foreign Policy Development, *Expert Deployment to International Peace Operations* (Ottawa: CCFPD, 2000), 1006.12E.

According to Justice Macdonald, this sentiment is echoed by the enthusiasm of some of her colleagues in the Canadian judiciary to become systematically involved in peace operations and projects abroad. The judges present at the roundtable were also supportive. However, before this can happen, several philosophical and practical challenges have to be addressed. They include, for example, the fear that the involvement of judges in peace operations could affect perceptions of their impartiality. Travel and other expenses related to working abroad need to be addressed. Time is also a question: there are limited opportunities for judges to leave their sitting duties. What are the criteria for selecting judges to peace operations and who selects them? Who is responsible for their training, safety on the ground and reintegration?

Answers to some of these questions depend on how one interprets the term "peace operations." A distinction should be made between countries recovering from conflict, on the one hand, and developing countries, on the other. Each situation demands a different set of responses.

The participants agreed that a coherent mechanism for involving judges abroad was necessary to overcome these challenges. Requirements include:

- identifying opportunities for involvement of judges in the context of their judicial duties
- identifying legitimate and useful projects
- creating a transparent application, screening and selection process
- building a roster
- developing training capacity
- eliminating systemic barriers to judges' involvement (including, the UN restriction not to deploy candidates over 63 years of age)
- grappling with concerns related to perception of impartiality.

In addition, government backing, supportive public opinion, and an overall recognition that the contribution of the Canadian judiciary to needs abroad is valuable, will be key in moving the initiative further.

2. Creating a Framework

Justice Macdonald identified 6 opportunities for judges to work abroad :

1. ***Judicial study leave (JSL)***. Provided by the Judicial Act, JSL allows judges to take time away from their judicial duties for a maximum of 7 months. It matches the academic year and requires judges to associate themselves with an academic institution. Removing or relaxing this requirement and allowing judges to work abroad during their study leave could be one way of creating opportunities. With the permission of the Chief Justice, associated universities could also allow judges to take 1 month of their JSL to work abroad. However, Judge Ross Godwin pointed out that study leave may not be as feasible as suggested because it is granted only to senior judges after a long waiting period.

2. ***Leave at the discretion of the Chief Justice.*** Judges may apply for leave to the Chief Justice, for a maximum of 6 months. Leave may be favourable to judges' involvement in peace operations because it allows flexibility.
3. ***Supernumerary status.*** To acquire supernumerary status judges have to be over 65 years old and have 15 years sitting experience. They are required to sit only half time. Supernumerary status allows flexibility and would provide peace operations with experienced, seasoned judges. However, the age limit set by some deployment agencies (including the UN) prohibits judges over 63 years old from being deployed.
4. ***Early retirement.*** Based on the date of appointment, the rule of 80 allows judges to take retirement before reaching the age eligibility. Earlier retirement may allow judges to dedicate their time to working abroad for a medium to a longer term.
5. ***Vacation time.***
6. ***Non-sitting week.*** (Non-sitting week is the 4th week during which judges are expected to write judgements after 3 weeks of sitting.)

Justice Peter Jarvis suggested that first of all, concrete projects for judges have to exist. Second, the Chief Justice should approve the projects and ensure they are legitimate and useful. Third, an application process with clear submission guidelines should be developed. Fourth, the Chief Justice should be directly involved in selecting judges for deployment (or matching them with projects), despite existing screening and selection mechanisms of some international and domestic organisations (UN, OSCE, CANADEM).

Questions about authority to spend money related to travel and other expenses have to be answered. Justice Macdonald suggested that the Commission for Federal Judicial Affairs (CFJA) could act as an intermediary. In case of deployment during JSL, reimbursements could be transferred from universities to judges through the CFJA. The universities would, in turn, receive funding for "judges in peace operations projects" from the Canadian International Development Agency (CIDA).

Patrick Ulrich (DFAIT) outlined a framework for deployment the Regional Security and Peacekeeping Division at the Department of Foreign Affairs and International Trade has been trying to develop. He emphasised the importance of prosecution in conflict prevention and its impact on peacebuilding. He addressed the logistics of deployment including the need for adequate screening, selection, training, debriefing and reintegration. Training, in particular, he said, requires some attention, from getting candidates psychologically ready for their activities abroad to providing inter-cultural management skills. Candidates should also be familiar with the workings of an international mission before being deployed. A system is being developed in co-operation with CANADEM aimed at addressing some of these pre-deployment needs. Ulrich warned that in many instances peace operations are inherently political, posing questions about the ability of judges to retain their independence and impartiality.

Efforts should be made to ensure that Canadian judicial activity abroad is not perceived or interpreted as "carrying the white man's burden." The "public good" aspect of the judges' work

should be emphasised and help build a favourable public perception, which most participants saw as key to getting the initiative off the ground. Support by the government, especially the Department of Justice, will also be crucial.

Canadian judges have been involved in peace operations in the past on an ad hoc basis. Stephen Bierbrier (Department of Justice) said that the international component of the work of the Department of Justice has evolved significantly in the recent past. The projects specifically involving judges address issues including: justice reform, minority issues in justice and the integrity of public sector. Legal experts in Eastern Europe, for instance, are eager to speak to judges. With a vision and enough political will, there is a potential to transform the ad hoc approach into a coherent framework, he said. The CFJA has also been involved in sending judges abroad, including Russia, Ukraine, and Ethiopia. A request from a foreign government is usually submitted to either a Canadian Embassy abroad or to CIDA directly. CIDA then approaches the CFJA to act as the executing agency. A growing number of Canadian judges are expressing interest in participating in CFJA projects and an informal roster has been developed as a result. CANADEM has had requests for judges as well. A recent demand came from the UN.

A unified roster of judges should be developed and, perhaps, administered by the CFJA. Judges could be notified of its existence and encouraged to sign-up either through the Judicial Council or through the Chief Justices. The roster should include retired and sitting judges, it should be filed by field of interest and contain relevant personal information, such as, the knowledge of languages and previous working experience abroad. The CFJA-developed application form could be improved to meet these requirements.

A point was made that judges do not always have to be deployed to contribute. Participating in international conferences and developing seminar curricula can have impact and judges do not need apply for judicial study leave or time off. The same applies to interactions with foreign judges, brought to Canada through international exchanges.

3. Next Steps

1. To inform and contextualise the initiative, an overview of past and present involvement of judges in peace operations and projects should be undertaken. Moreover, existing (deployment) practices should be reviewed, starting with those of the Department of Justice, the CFJA and CANADEM. The Canadian Centre for Foreign Policy Development could be approached to commission such work as a follow-up.
2. A working group, led by Justice Macdonald, should be formed to keep the initiative moving forward.
3. The "judges in peace operations" concept should be perfected and used to "sell" the initiative. A clear concept will help identify needs and interests. One could argue, for instance, that the work of Canadian judges abroad would contribute to a more experienced and skilled judiciary at home. Involvement of Canadian judges in projects

abroad would strengthen Canada's moral standing in the world. It would also reflect the Canadian government's efforts to support democratic development and good governance world-wide. There is a history of Canadian judges' involvement worth building on. A point was raised that "representing Canada" abroad may not be the right path to promote the initiative. Judges are and should remain to be seen as independent from the government. Working under a national banner or, even worse, a government directive may compromise perceptions of their independence and impartiality.

4. Synergy should be created, drawing on other judicial initiatives, such as, the International Judicial Education project, as well as work of judicial bodies including the International Judges Association and the International Women Judges Association.
5. A plan of activities should be created along with a roster and submitted to the Canadian Judicial Council for review and approval.
6. Awareness about the initiative should be raised.
7. If approval is secured, a pilot project should be developed and launched to test the new system.
8. After a pilot project has been completed and evaluated, long term objectives should be addressed.

Key to this plan is the commitment and the will of the Canadian government. The Department of Foreign Affairs and International Trade, the Department of Justice and the Canadian International Development Agency have to express the value and the need for this involvement of the Canadian judiciary abroad. Participants representing these departments were encouraged to promote the initiative with their superiors.

Roundtable on "Judges and Peace Operations"

List of Participants

March 9, 2001

B3-500, Department of Foreign Affairs and International Trade
Ottawa, Ontario

**The Honourable Madam Justice Ellen
Macdonald**

Ontario Superior Court

The Honourable Mr. Justice Peter Jarvis

Ontario Superior Court

**The Honourable Mr. Justice Peter
Howden**

Ontario Superior Court

**The Honourable Mr. Justice Derek
Guthrie**

Ontario Superior Court

L'Honorable Juge Ross Goodwin

Quebec Superior Court Justice

Nestor Yurchuk

Management Consultant

Diane Elkas

Director, International Relations
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