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RICHARD B. LILLICH: IN SERVICE TO THE UNITED STATES

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Richard Lillich was the country's leading scholar in the field of international claims and state responsibility, and one of its most respected international human rights teachers and advocates. In both areas, the United States Department of State sought his counsel on repeated occasions over the years. Professor Lillich enjoyed being consulted by the Department, and was always ready to share his wisdom and experience. We here briefly summarize his many and direct contributions to the work of the Office of the Legal Adviser.

Professor Lillich had a special interest for the claims field, and over the past fifteen years, he developed a close relationship with our Office of International Claims and Investment Disputes. The volumes he coauthored on international claims practice, and his many scholarly articles, have long served as standard references for us. His interests—and his assistance to us—spanned the full range of our international claims work. We could call him to discuss an issue in a pending lump-sum claims settlement; his collection of third-country agreements in the field provided us valuable points of reference. When we faced issues regarding espousal or diplomatic protection, he was always available to share his insights and background. His contributions were highly significant and of great value to our office. He leaves a legacy of rigorous and practical scholarship that will continue to assist us in the future. And, at the same time, nothing seemed to delight him more than working with us on major projects.

The Iran-United States Claims tribunal was a major focus of Professor Lillich's attention. Our collaboration began in 1981, not long after the Algiers Accords had been concluded, when we sought his advice and assistance on various aspects of the program to adjudicate claims of United States nationals before the tribunal. Among the first projects he undertook was an extensive review for the Department on the precedents and substance of the *force majeure* doctrine in international law, the law relating to claims for

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expropriation and expulsion, and various procedural and evidentiary issues. Over the years, he reviewed and commented on memorials submitted by the United States government and participated as a member of the United States government litigation team in oral hearings before the tribunal.

Professor Lillich also appeared as an advocate for the United States in several hearings before the tribunal. In Case No. B/1 (Claim 4), Iran sought damages for the refusal of the United States government to export Iranian-titled Foreign Military Sales items held by the United States government. Among other arguments, Iran claimed that the United States had expropriated its property. At the hearing in 1987, Professor Lillich argued this issue for the United States government.

Last year, Professor Lillich assisted us in two additional United States government cases. In Case No. B/36, the United States sought to collect a lend lease debt from Iran. In Case No. B/58, Iran sought a recovery for damage it alleges the United States caused to its railroad during World War II. In the former case, Iran argued, *inter alia,* that the debt was odious and that it could not be collected because of the doctrine of prescriptive extinction; in the latter case, we argued, *inter alia,* that the prescriptive extinction doctrine should prevent Iran from collecting. Professor Lillich researched these doctrines and presented the United States government's argument on them in both cases with distinction. Recently, the tribunal dismissed Iran's claim in Case B/58 and awarded the United States $43 million in Case B/36.

In the early and mid-1980s, bringing together his claims and human rights interests, he assisted us on the "wrongful expulsion" cases before the tribunal. These were cases brought by United States nationals with small (under $250,000) claims against Iran before the tribunal, for which the Algiers Accords assign the United States government the responsibility of presenting the claim. In these cases, the claimants argued that Iran was liable for a variety of losses resulting from the claimants' wrongful expulsion from Iran. Professor Lillich reviewed the pivotal briefs in these cases and assisted at the oral hearing in the precedent-making case in each of the tribunal's three chambers.

Professor Lillich also focused on questions of nationality. At issue was whether United States nationals who, in Iran's eyes, were also Iranian nationals could bring a claim before the tribunal. The tribunal decided its jurisdiction over each case by determining in each case which nationality was the "dominant and effective nationality" of the individual. A number of private clients engaged

Professor Lillich to argue their positions before the tribunal, first, with respect to the jurisdictional issue and subsequently, with respect to the issue of whether and how a second nationality might impact on the merits of a case (the so-called "caveat" issue).

Recently, the tribunal made a decision most United States claimants and the United States government believed wrong on the caveat, concluding that a certain fact pattern indicated an "abuse of right" by the claimant, who had already been found a dominant and effective United States national. The United States filed a brief reviewing why we thought the ruling was incorrect, based on the research and draft prepared for us on the abuse of right question by Professor Lillich. In fact, we worked on this filing with Professor Lillich the week before his death.

Professor Lillich loved The Hague. He enjoyed arguing before the tribunal on behalf of the United States government and in the interests of United States claimants. The judges on the tribunal knew and respected him. After each oral argument, he enjoyed the celebratory fine dinner with the United States team. It was always a pleasure. He displayed wit and bonhomie; he liked the good life and he led the good life.

His plans for the future in the claims field were many. He was working on a compilation and analysis of the awards of the Foreign Claims Settlement Commission resulting from the 1990 settlement of the small claims with Iran. He was also collecting a further series of lump-sum claims agreements for publication, and we had provided him those the United States concluded in recent years. Since the Office of the Legal Adviser has ceased publication of the *Digest of United States Practice in International Law*, Professor Lillich had the idea of preparing a digest of state practice in the field of state responsibility and made initial contacts with many foreign office legal offices worldwide to get that project under way. Further, the International Law Commission's idea to embark on a study of diplomatic protection was right down his alley. He made important suggestions that were incorporated in the comments the United States government submitted to the United Nations in the summer of 1996 and was planning a major conference on this subject for October 1996 at The Florida State University College of Law.

In the field of international human rights, our relationship was less visible, sometimes less comfortable, but never less important or productive. Here, Professor Lillich most often served as informal counselor, advising us of new developments, suggesting possible initiatives, offering critiques of what he viewed as misguided governmental policies or positions, or serving as a sounding board for

new proposals. The breadth of his knowledge, the depth of his expertise, and his total devotion to the field of human rights made him an incomparable resource for those of us working in this area. His textbook and scholarly articles have long been references of first resort in our office, and over the years not a few of his former students have been our colleagues.

In contrast to our collaboration in the international claims work, our consultations on human rights issues were more likely to be characterized by differences of substance. In fact, Professor Lillich seemed to take particular delight in letting us know where we or our clients in a given administration had gone wrong, or were about to. He made no secret, for example, of his disdain for the slow pace of United States ratification of human rights treaties and for the government's practice of imposing reservations, understandings, and declarations as conditions of ratification. He saw great promise in the protective role of customary international law in the domestic United States legal system and sought to promote its use through such litigation tools as the Alien Claims Act and the Torture Victims Protection Act. He had few qualms about the doctrine of humanitarian intervention and was a staunch advocate of the need to hold human rights violators accountable under international law. He was an early believer in the normative importance of so-called "soft law" principles and their development by various U.N. commissions, conferences, special rapporteurs, and working groups.

We respected—indeed, greatly valued—the independence of his views and his always good-natured willingness to share them with us in a constructive dialogue. Even when we found ourselves on opposite sides of a given issue, there was never any doubt that we shared the same objective and sought the same goal—advancement of the international law of human rights. Most delightful were those special occasions when we would contact him, or he us, to note a new development in the field and discuss its significance and portent. These were moments of the greatest professonalism and in the best tradition of cooperation between government and academia.

It was a special delight for us to be invited to the law school campus to participate in one of his human rights law classes; on such occasions, he was not above asking us to "play the role" of the Chairman of the Senate Foreign Relations Committee in a mock hearing at which his students would argue the case for ratification of a particular human rights treaty.

In both the claims and human rights areas, Professor Lillich pursued a particular interest in the practical application of international law, in its use as a tool to advance the interests and rights of

individuals and institutions. This part of his legacy is of course embodied in the Procedural Aspects of International Law Institute, which has brought together scholars and practitioners. Quite possibly, it was this dimension of his professional outlook and orientation which carried a special affinity for those of us working in the governmental side of international law on a daily basis—that, of course, and his gentle nature, good humor, and wisdom.

Above all, one thing is clear: those of us lucky enough to have worked with Professor Lillich over the years benefited from his exacting standards of scholarship and professionalism.

In all these activities, Richard Lillich made contributions that were central to the positions of the United States and to the development of international law. His are shoes that will go unfilled, and he will be sorely missed.