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**AUSCRIPT**

**TRANSCRIPT OF PROCEEDINGS**

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O/N

**ASIA PACIFIC JUDICIAL REFORM FORUM**

**WORKING PARTY MEETING**

**HELD AT WESTIN HOTEL, SYDNEY  
16 - 17 MARCH 2006**

**DAY TWO:**

**8.30 AM, FRIDAY, 17 MARCH 2006**

**Continued from 16.3.06**

**PARTIES PRESENT:**

**PEOPLE'S REPUBLIC OF CHINA**

**Justice Sheng Deyong**

**Justice Hu Yunteng**

**Ms Yu Xiaoyu**

**Interpreter: Jack Meng**

**INDIA**

**Justice Arun Kumar**

**INDONESIA**

**Justice P. Lotulung**

**Pak Subagyo**

**Jamie Vueti**

**Ms Cate Sumner**

**Ibu Wiwiek Trisnohandoko**

**MALAYSIA**

**Justice D. Malanjum (Richard)**

**PHILIPPINES:**

**Justice Angelina S. Gutierrez**

**Justice Antonio T. Carpio**

**Justice Conchita Carpio Morales**

**Justice Adolfo S. Azcuna**

**Ms Evelyn Toledo Dumdum**

**Ms Jennifer Manalili**

**Mr Dennis Baldago**

**RUSSIA**

**Ms Polina Kryuchkova**

**THAILAND**

**Mr Voravuthi Dvadasin**

**Mr Sobchok Sukharomna**

**AUSTRALIA**

**Chief Justice Gleeson**

**Justice K. Hayne**

**Justice J. Mansfield**

**Justice P. McClellan**

**Ms Jane Probert**

**Christopher Doogan**

**Warwick Soden**

**Ernie Schmatt**

**Ms Elizabeth Connolly**

**Ms Helen Burrows**

**UNDP**

**Mr Jak Jabes**

**WORLD BANK**

**Mr Anthony Toft**

## **THE WAY FORWARD - JUSTICE HAYNE**

JUSTICE HAYNE: Well, good morning, ladies and gentlemen. I hope that you have recovered from the rigours of yesterday and that the reception last night followed by dinner were suitable ways in which to recover. Now, I must make good on the various threats and promises that I uttered yesterday. I said that today  
5 we had some real work to do so now it is time that I delivered on these dire predictions. You will recall that yesterday we identified four subjects that seemed to be occurring themes in the individual presentations made by delegations, expedition, access, education, independence.

10 We thought that a way of proceeding today would be to divide our party into two groups, leave the two groups to talk amongst themselves in the first instance on the subjects of expedition and access; come back, report to the assembled group on where the two separate parties had reached in identifying projects that this group or that the forum might undertake. That would take us through to about  
15 morning tea or after morning tea. Then go back into the same groups and discuss the two remaining subjects, namely education and independence and those structural issues and again, come back, report and see whether as a result we can come to a common view about the immediate objectives and outputs that we would be looking for this forum and the ensuing network to produce.

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## **IMMEDIATE OBJECTIVES AND OUTPUTS TO BE AGREED**

25 JUSTICE HAYNE: So the objective would be that the groups would meet to discuss what exactly would be the projects that the group considers that the forum, the network could undertake and should undertake to be of value to the national systems under the four headings I have indicated. The first two will be

the first two that were mentioned in so many presentations. Questions about expedition, backlogs, if you will. Questions about access to justice which seem at least to me to be intimately connected with notions of expedition.

5 Now, with the kind permission of the delegation from the Supreme Court of the Philippines we are going to divide their forces. They have, as we all know, had rather more thought about some of these aspects than some of us have and I and others are anxious that their knowledge be available generally. Now, subject to that what we propose is this; that we divide into two groups, one on this side, one  
10 on that side, all in the same room; that the Australian delegation too will divide simply to facilitate as much as we can the groups and the division we propose is inevitably arbitrary so forgive me. This is simply an exercise in putting groups together. I am sure each of you, as any judge, would have made the division entirely differently but alas, someone has to and I have.

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So the division we propose is that, again purely arbitrarily, on this side of the room perhaps we might assemble the Indonesian delegation, a part of the Philippines delegation - I leave to you, ladies and gentlemen how you divide your forces subject to the matters I discussed with you. The Malaysian representative,  
20 the Russian representative and Justice Mansfield and Mr Soden of Australia will join with you, and on this side we would have China, Thailand, India, Justice McClellan and Mr Schmatt would join you.

I leave it to our representatives from World Bank and UNDP to take such course  
25 as they see best fitted. I would propose, I am afraid, to behave like every chairman and ineffectively move between groups thereby achieving very little but looking terribly important while I do it, but I hope that I may be able to assist. Our objective is that immediately after the morning break each group, each side that is, would be able to come forward with a defined proposal or set of proposals  
30 for what they think the forum or network could do that would be of utility to national organisations on the subjects first of expedition or if you will, backlogs, and access to justice.

After we have had that interim report we would again divide in the same fashion, discuss the remaining two subjects; again come back together, again have an interim report and then, with those two interim reports before us I would hope that we can refine and define finally where we have got to at this meeting. Now, that is the proposal. I hope it meets with your approval. I regret to say it means that we now engage in a touch of furniture shifting but the objective is if we could, please, to divide in the fashion described, sit down and let us begin.

It will be necessary at the end of this process for one of your number to come forward with a short - regrettably, a short report on where you have got to. The overarching question remains as I indicated to you last night, what is it that this body can do that will be of value? So with that introduction may I commend to you the work that you undertake and let us begin and see where we can get to.

Thank you.

#### **SHORT ADJOURNMENT**

**[8.48am]**

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#### **FACILITATED DISCUSSION**

#### **RESUMED**

**[11.00am]**

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JUSTICE HAYNE: Now, ladies and gentlemen, although it's a little awkward to stay in the positions you were, you may find it's ultimately more convenient because we will of course be going on in two groups. But having got to this point where we've spent an hour and a half or so talking about the first of the two issues, let's draw breath and see where the two groups have got to, let's have a short

discussion-question session after each presentation, and then let's go on and look at the third and fourth topics.

5 The objective being that by the lunch adjournment we should have completed our discussions in separate groups. Soon after lunch I think will most likely prove the timing, but let's see how we go. We will have a presentation of topics three and four and then try to draw it together. But first, where have we got to on points 1 and 2? Let's start on this side. Peter, can you come and present where your group has got to?

10

JUSTICE McCLELLAN (Australia): Thanks very much. We had an interesting discussion that initially ranged over two topics but out of the two topics has come one project which we in skeleton have defined. The two topics were as it came down ultimately a handbook on judicial reform, which you can see on the screen, and I will come back to that. It's that topic that we have ultimately accepted amongst our group as the appropriate project covering both expedition and access to justice. The second topic which has attracted, I think, everyone's imagination and more is the question of the mobile Court and we had a discussion amongst our group about some of the things that have been done in China and – may be done in China - the approach to the question in India and of course the knowledge and experience from the Philippines.

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It was decided amongst our group that the mobile-Court matter was one which would logically flow out of the project which we ultimately see as the first objective from our group, and I will come back to that in due course. You can see on the screen, the brief description is The Handbook for Judicial Reform. The object is to provide a handbook for all of the countries within the forum which defines good - we're a bit shy of the word "best" but we put it there, but good practice in particular areas, and secondly, the steps which may be necessary to achieve that practice.

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We've drawn up a list of suggested topics but as the text says this will need development and refinement and we feel that that development and refinement will have to come from a small group charged with the responsibility for bringing this project ultimately to fruition. But some of the matters that the group put forward were firstly physical requirements. That has to do with what you need by way of a Courthouse, what you need within the Courthouse, and also importantly the facilities you need to manage the processes of the Court. What you need by way of registry offices and facilities. It's obviously a big topic and into that topic comes of course the question of the extent to which in some countries you might provide your Court rooms by a mobile facility. So that out of this project will come an identification of the utility and perhaps the practical application of the mobile Court room facility.

The second topic is case-flow management and that of course has to do with the speed with which problems in the Court are processed and resolved and addresses the question of the need for expedition, how you deal with backlogs and so on. Thirdly, the means of providing access to the Courts, that captures not only the physical problem but also the problems of providing people with representatives, how you fund the representatives, and the like.

Four, effective codes of conduct. I think we all understand what's meant there. Some countries already have codes of conduct. The project would look at those existing codes, determine those which are seen to be the most effective, and look at the countries which are yet to address the question and identify ways in which they might be assisted to deal with the provision of effective codes of conduct. The word "effective" is included in order to make sure that not only is the question of providing a code identified but also the means by which judicial officers may become - or see themselves as bound to conform to that code. Effective financial management, a very important question for any Court in any country and a matter which has been included.

Six, the use of technology. That of course captures some of the matters referred to in discussions yesterday. It's an issue as important to Australia as it is to any country within the Asia Pacific region. And as I think I said yesterday, we believe in Australia we have a lot to learn in that area, particularly from India, but also, I think, from China, and other countries as well. But the use of technology captures not only the management process - the administration process, but also of course the use of technology in the Court room and the way it can be integrated to make the Court process efficient and achieve the best decision-making process at the end.

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Seven, administration; eight, training of judges and administrators; nine, the use of alternative dispute resolution, that in itself of course is a significant topic; and then then, we identified separately, although it's picked up by the earlier matters as I indicated, this question of mobile Courts. Now, there will be, as the heading suggests, a need to develop and refine the topics to be studied and brought forward under this project, but that's a starting list of the matters that today we thought would need to be looked at.

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We then provided a short statement describing the project, its fundamental objective - that is of this proposed handbook - is to provide a reference document for the judiciary and the executive of each member country. And we see it as important to provide a document that speaks to the judges as much as it's important to provide a document that speaks to the executive of each country because if you're talking about change in many of these areas, you must of course involve the executive in supporting in real terms - and that of course may include money - the outcome that you seek to achieve.

25

So the document - we see as fundamentally important to this document, that it speak not only to the judiciary but also to the executive. Our initial thoughts are that it would be necessary to engage one person full time to manage the project and be responsible for the production of the document. We think it would be necessary - almost certainly - to engage other people perhaps part time or to fulfil

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particular discrete parts of the project, but it would be essential as we see it to have one person who owns the project. Not only owns the management of the project but owns ultimately the document that comes from it.

5 We believe that person should be responsible to a steering committee of the forum for the achievement of the ultimate objective. Now, information from some jurisdictions is already available but it would be necessary as we see it to survey member countries to identify their current problems and existing reform projects. From the information gathered, benchmarks would be defined. People in our  
10 group spoke in terms of the ideal minimum Courthouse, for example. The ideal minimum electronic facilities within the Court room.

Others spoke in terms of the benchmark for the number of judicial officers per head of population in a particular area. Others speak in terms of locating Court  
15 rooms within a certain distance of an identifiable population within perhaps a geographical area, or in the geographical areas of the country. There are lots of things that would fall under the description benchmarks which this project would define and then provide effective responses to achieve those benchmarks and explain through projects which some countries may have successfully undertaken  
20 and explain to those who might be keen to undertake the projects generally how you would go about doing them.

We see the handbook as a comprehensive document from which individual projects in single countries or groups of countries would logically emerge. The  
25 forum would provide assistance with the development and implementation of individual projects in member countries. What that means is we see this document as providing some form of authoritative investigation and statement of principles by which defined reforms can be achieved in many countries within our region. We then see coming out of this project the next series of projects which  
30 would be the implementation in individual countries or groups of countries of particular projects. Those of course would be projects separate to this one, but this one would provide the benchmarks, provide the statement of principles

through which reform can be achieved in particular member countries. That's a brief discussion of where we've got to, Ken, and of course it's open for further discussion.

5 JUSTICE HAYNE: Do people have any immediate questions - any immediate comments that they wish to clarify or make at once? Please?

JUSTICE ADOLFO S. AZCUNA (Philippines): Do you have any timeline for this project?

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JUSTICE McCLELLAN (Australia): No, but I think - understand that a project of this size would take more than a year. I, in having discussions with Jak, believe probably you would be thinking in terms of two years for a project of this size if it's to achieve satisfactory outcomes. Jak, do you have a comment on that?

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MR JABES (UNDP): Our access to justice one took three years.

JUSTICE McCLELLAN (Australia): Yes, and was that what you expected when you started?

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MR JABES (UNDP): I don't know, I wasn't there, but I think people usually think it will go faster.

JUSTICE McCLELLAN (Australia): Yes. Sure. But two years might be a realistic time-frame?

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MR JABES (UNDP): Yes, I think if you have a good task-master.

JUSTICE McCLELLAN (Australia): Yes.

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JUSTICE HAYNE: Please?

JUSTICE ANTONIO T. CARPIO (Philippines): Yes, I think it can be done within two years, or probably between one to two years. Considering that there are a lot of projects already being undertaken and that many of these have been documented already. So I think a lot of work has been done. We have just to  
5 compile them and refine them further. Thank you.

JUSTICE HAYNE: Any more immediate reactions? Yes?

JUSTICE D. MALANJUM (Malaysia): Your Honour, I would like to know who  
10 would then be responsible in preparing the handbook?

JUSTICE McCLELLAN (Australia): What our group had in mind is that the secretariat of the forum, which we need to put in place, would be responsible for raising the funds to enable the project to go forward. There would be one person  
15 who would be in charge of that project responsible for managing it and then responsible for the document that emerged. That person may well have other people working with him or her but that person would be responsible back to a steering committee of the forum for the ultimate product, but I think it would be all of our experience that at least one person, if not more than one, but at least one  
20 person would need to own this project full time, that would be their task and that is the way we would see this working.

JUSTICE ANGELINA S. GUTIERREZ (Philippines): How soon can we establish or create the secretariat and what country is responsible for that body?  
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JUSTICE HAYNE: There I think we have a whole set of separate issues. I think, let us for the moment walk round those issues. I think after lunch let us consider the secretariat and how we can set that up because I think there was much force in what was said at one point yesterday, that the organisation depends  
30 in significant degrees upon the tasks that are to be performed. Let us go forward with our task identification, then perhaps we can get a better feel for what kind of organisation we need to achieve those tasks.

Now, is it convenient to move on then to the report from the second or other group - not second group, first group on the other side of the room, but for that purpose we need again to have the computer, do we? Yes, okay. It is amazing  
5 what you can do with a USB port and a memory stick.

JUSTICE ANGELINA S. GUTIERREZ (Philippines): Good morning, participants. Initially our group assumed that there is already a secretariat to whom we will submit our proposed projects and issues. With respect to the first  
10 point how to expedite cases, initially again we discussed the matter of backlogs in all the trial courts and appellate courts and so we discussed how each country treats the problem of backlog and it has been a long discussion because each participant discussed with us how they solve or how it solved or he or she resolves the problem of backlog in its individual courts.

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A problem was raised with respect to backlog, that is we propose to establish a model or backlog reduction plan and so with respect to this project we listed the steps of check lists. For example, we set the time - the setting of time limit in considering when a case is considered a backlog and so we gathered all  
20 information from all participants about the time limits set by each court. For example, in the Philippines with respect to the Supreme Court, we have two years to decide or to dispose of a case; after two years it is considered a backlog, so each country has different sets of time and we all considered that and so with respect to this issue we set a time limit that is two months and then we also  
25 discussed to solve this backlog problem, we propose that we conduct an inventory of all cases in the course of each participant country.

In that way we will know the present dates of the backlog of cases remaining or cases remaining and acted upon and so we propose to develop a model, and this  
30 involves preparation or output, within two months and then we propose that seminar on the elements of model introduction on the model and the time limit or the time line is also two months. After discussing the backlog because all the

courts - all the courts practically have backlogs, we concluded that if this backlog of cases can be eliminated in certain procedures which can be set as models for all participating countries, this will be a tremendous help to the system of fast administration of cases.

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After we discussed the problems and backlogs and proposed a model for it, we went to the problem of expediting cases not considered backlog by going on to the subject of alternative dispute resolution, because if all the courts of the participating nations will avail or adopt ADR definitely there can be expeditious  
10 dispositions or resolution of cases so we propose that there should be a survey or collection of information, development of a model and seminar on the elements of model and adaptation of the model and we propose that this can be done within two months.

15 There are special cases which require expeditious dispositions such as cases involving national issues, cases involving constitutional issues and this can be given special attention by the justices or judges concerned and so with respect to these special cases they are not considered backlog but there should also be special attention given to it. With respect to the special case management  
20 technique for Chief Justices and Chief Judges management technique means that these heads of each court should avail or should know the administrative mechanics so that the justices are able to determine outright cases which need special attention, and again, we propose seminars on special case management techniques. We set timelines which you can see on the screen.

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We discussed values incidents concerning expedition and access and which we believe can be included in the handbook proposed by the other group. Again, I reiterate that you can see the timelines there. The question here as we ask a while ago is the creation of the secretariat and a steering committee which can be  
30 discussed anyway after lunch as Justice Hayne said, so I guess that is all.

What else? That is very important. This topic has been raised during our discussion. What do we do with respect to people who cannot avail of justice practices, for example, the poor who cannot go to courts through lack of money. For example, the wives who are victims of their husband's abuses; the children  
5 who are also victims of parental abuses and those who live from far-flung areas. Yes, they have limited access to the courts, so what does the court do with respect to this kind of problem? How does the court engage with different cultures as well as vulnerable groups which I mention, so we propose this kind of methodology.

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A survey should be conducted for the purposes of collecting information on this and the period or time length that is proposed is two months and development of possible models of success, again the timeline is two months and we propose also that seminars be conducted on the possible models of success, two months.

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Indeed, there is luck on the part of people or they are not aware of their rights so we propose that a design of public education program by the courts be established or prepared containing different forms of legal assistance, aid information and the work of the court, and again one of the methodologies is to conduct a survey for the purpose of collecting information on this project, development of possible  
20 models of success and conducting a seminar on the possible models of success.

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Indeed, access to justice is really limited to people who are powerful, who are rich, and if this group can really do something about this, this will be a tremendous help, not only to each nation but to the entire world, so any other  
25 matter which I forgot? And so I reiterate that these matters which we raise as projects of issues be incorporated in the handbook proposed by the first group. Thank you.

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JUSTICE HAYNE: Well, then, where are we? Where have we got to? We  
30 have, I think, two separate approaches to the problem which I think ultimately can be seen to link one to the other. The first group looks towards preparation of a handbook; the second group looks to dealing with more specific problems

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through methods which might be summarised as survey, model, discuss, identify, work out a model, disseminate information, so there are those two perhaps different approaches to the issues that now arise.

5 I ask you to bear those in mind when we come after lunch to work out how we should go forward. They can, I am sure, be put together. Is that the best outcome putting them together? How is it best to put them together or is it better to treat them as separate, to pursue one rather than the other? All of these are questions that we will have to confront directly after lunch and at that point we may have  
10 some of our livelier discussions.

Now, we have two more topics, the remaining topics. Education and independence. Bearing in mind that there is the approach through the preparation of a handbook that has been suggested by one group, bearing in mind that there is  
15 the approach suggested by the other group of survey, model, discuss, how would each group approach now the questions of education and independence? How would each group approach those topics using not only the method that they embraced in considering the first two topics, how would the groups approach those two topics if they were to embrace the opposite method, the other method;  
20 is there a third or a fourth approach that we should be considering?

All of these are questions that need to be considered explicitly. Let us not at this stage confine our thinking to particular channels that we may have seen created in our discussion thus far. Let us see what would be good about, what would be bad  
25 about, what would be useful, what would not be useful were we to follow another path home, for if we have considered those things it is likely that our ultimate discussions will prove the more fruitful.

Now, the time is a little after half past 11. All of us have a photo opportunity at a  
30 quarter to 1. We are apparently to have a group photograph taken at that hour. We must therefore cut our time cloth accordingly. We have about an hour and a quarter before that event. Let us see how we go having established in our first

session methods of working. It may be that these two topics will progress quicker, you may find, however, that these two topics are rather knottier, rather more difficult, I don't know.

5 Let us see how we go, but for the moment the boundary is a quarter to 1. Ideally I would hope that you might have got to the end of your discussion to produce presentations of the utility which these two have been, in time to make a presentation perhaps even before the photo, but if we can't I would rather we took the time. We have got to get this right. This is the only chance we get to get it  
10 right, let us take the time we need to do it and do it right. So, education, independence, what are the projects, what are the priorities, what do we want to do?

15 **SHORT ADJOURNMENT** **[11.34am]**

#### **FACILITATED DISCUSSION**

20 **RESUMED** **[1.56pm]**

JUSTICE HAYNE: Now, ladies and gentlemen, let us pick up on where we have  
25 got to with the second half of the exercise, in which we were engaged, and let us begin with the group that met on my right.

JUSTICE McCLELLAN (Australia): Our group looked separately at education and independence, and in the education category we came up with three projects.  
30 Projects two and three are not as all encompassing as project one, and I will explain those other projects to you in a moment. But project one we gave the title, the working title, best practices in judicial education. And you can see on

the screen the tasks we identified as necessary to carry out this project were firstly to study the processes for judicial education, which have been provided within members countries. Now, we appreciate that some countries will have quite sophisticated processes and programs, and others may indeed not have any at all.

5 But we saw it as essential to this project to firstly study what is presently available.

Secondly, we saw it as essential to identify the methods which have contributed to effective outcomes, and those which have not. In other words, we see this project

10 as working towards an understanding of what works in judicial education. From this we thought we should be able to gain an understanding of the type of program which is most effective, having regard to the judicial environment in particular countries. The group was conscious of the fact that what works in a Pacific country may not work so well in an Asian country. What works in China may not

15 work so well in Australia, the Philippines, Indonesia, and so on. So under heading two we saw it as important, not only to identify what works, but try and relate what works to the judicial environment of particular countries.

And thirdly, and importantly, we saw the project as being able, after gathering the

20 information, to develop recommendations as to the practices for judicial education which should be adopted by individual member countries. That short hands it a little, because it may be that there are programs which should be developed for groups of countries, and we have in mind again, in particular, that it may be that programs should be developed which work for groups of Pacific countries

25 perhaps, or other groupings, and we had in mind particularly the Laos/Cambodia/Vietnam group perhaps as one group that we might look at working together, perhaps with China, to develop effective programs. The overall objective is to enable member countries to understand how judicial education can be provided for them, and if necessary enable them to define a project for which

30 they may seek dedicated funding.

And we had in mind there that if this project was effective it should enable individual countries to either go to their governments to say, please help us by setting up a program which has these elements, and perhaps either directly, or with the assistance of their government, perhaps going to an aid organisation to assist in the funding of a particular project for that country. So that is project one.

5 Project two we gave the heading web site to. The object of this project is to provide a web site from which member countries and others can access judicial decisions of Supreme Courts and other documents, papers, speeches, and the like, dealing with matters of interest to judges. That should really mean to the education of judges.

10 Now, we identified in our discussions, having advanced the idea that there are already in existence, certainly in Australia, and possibly elsewhere, sites which are in the process of drawing together information about the decisions of judges across jurisdictions. In Australia there is a site known as AustLII, which is the site, I suppose, most used by Australian lawyers and judges to access the decisions of Courts within Australia. I think the title that's given to it is WorldLII. Am I right? The company that is responsible for AustLII we believe at the moment is in the process of developing a site which will be known as WorldLII, which is designed to bring together - it exists already, does it? It's already there apparently. I am not quite sure the degree of sophistication which it presently has.

20 But if it is there it seemed to the group, after discussion, that it may be that the forum should, through its secretariat, be talking to WorldLII about ensuring that that site accommodates the needs of this group to provide an appropriate site from which to - or into which to in put the decisions of the participating countries, and then with an appropriate search engine enable all of us to extract the information which might prove to be of assistance. We did recognise that there will be a problem in developing a comprehensive site, which of course flows from the language difficulty. I did say that perhaps all Australians will need to learn Chinese or maybe all Chinese will need to be able to read English. I don't know, but there will be a problem there, which we acknowledged in our group, but we

didn't see that as an impediment to doing as much as can be done to provide an effective site.

5 It would also be important in talking to WorldLII to make sure that their site was  
capable of accommodating more than judgments, so that papers, speeches and  
other documents of value could also be found on that site. The group believed  
that the resource required from this organisation may not be so great. It may be  
just a question of the secretariat talking effectively with WorldLII, assisting them  
to understand our needs, and then incorporating our needs into their site, and then  
10 making sure we communicate back to our members, so that best use can be made  
of the facility that is provided. The third project we headed, judicial exchange.  
The purpose here is to facilitate the interaction of judicial officers between  
countries. This already occurs, as many of you would know, in an ad hoc way.  
The number of exchanges is increasing, in our experience, every year.

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We receive, and are very glad to receive, an increasing number of visits from  
judges from overseas, and in the Supreme Court, and I am sure in other Courts,  
we are encouraging our judges to go to other countries when invited to participate  
in education programs in other countries. As many of you may know, there has  
20 been a very significant exchange of judicial officers between Australia and China  
and that's an exchange which is growing every year. Now, this project we saw as  
assisting to identify those countries with effective judicial education programs,  
make that information available to others, and facilitate the participation of other  
countries in those programs. What we see this project as being capable of  
25 achieving is an effective exchange of information about what one country is able  
to provide to assist another country, by way of participation in judicial education  
programs.

30 It would of course also facilitate where it can, and encourage the continuation of  
direct exchange, which may not be an exchange which involves participation in a  
formal program, but merely an exchange which provides for an ad hoc visit to a  
Court or other facility, and a capacity to appreciate and understand how one

country goes about solving the problems which are common with another. Again, we believe this project can be undertaken by the secretariat, and may not need external support or finance. Although of course if there was an identified need for participants from countries which needed assistance perhaps with travel, it may be  
5 that the secretariat may be able to facilitate or assist the country in need to approach appropriate organisations and ask for assistance.

So they are the three projects under the heading education, and I have added, without the knowledge of the group, a fourth, which is probably an obvious one,  
10 but when you start thinking about the first three you realise how essential this is, and that is a newsletter. There must be a forum newsletter which is both regular and informative. I think the secretariat will need to set an objective for the frequency of publication, and there will be a need to encourage all participants in the forum to provide material for publication in the newsletter. No doubt that  
15 newsletter will be distributed by email, but nevertheless it is an essential component, if we are to take forward the judicial education projects which we identified in our group.

Now, to the really hard one. Independence. We offer this project, although  
20 everyone in the group realises how difficult it may be to achieve this project, certainly in its entirety. What we defined was a study with its purpose being to provide a report in relation to the following matters. Firstly, defining judicial independence, what does it mean? Secondly, the need - addressing the need for judicial independence. Thirdly, the means of achieving and identifying  
25 impediments to achieving judicial independence, and under that heading we grouped the following matters, but there probably are more. Firstly, Court structures. In other words what is provided to ensure that the Court can undertake its functions effectively.

30 Secondly, the financial arrangements for an effective independent judiciary. Do you have one line budgets? Are they essential? What relationship should there be between the Court and the provider of funds, the treasury in any country? Who

should provide the interface between the Court and the treasury? Lots of issues arise under financial arrangements. Thirdly, the group believed it would be important to identify and discuss the principles by which judges should be remunerated, and not only the judges but also the Court staff. The need was expressed by a number of members of the group to make sure that when we think about providing effective remuneration so that people maintain their independence, we shouldn't overlook the important interface between those who administer the work of the Court, apart from the judges, and those who provide the funds.

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We then identified the need to look at the appointment of judges, tenure, and the capacity to dismiss judges. Again, the working conditions of judges and Court staff, and Court security were all identified as topics that would need to be examined in detail, and incorporated into an effective account of the way in which judicial independence can be provided and maintained. The ultimate aim of this project would be to identify the shared objectives which comprise judicial independence, and the means by which they can be achieved. We had no other project under the independence category. Thank you.

20 JUSTICE HAYNE: Now, are there any immediate questions that arise about that presentation? No? Let us go then and see how the other group got on with their tasks.

25 JUSTICE D. MALANJUM (Malaysia): Good afternoon, your Honours. I have got the task of doing the presentation for the second part of the discussion and I am afraid to say that most of the points may have been covered by his Honour just now but anyway, we try to add in where we can. In the same way as we have done this morning we do it in tabled form and we do the reverse so that you wouldn't get confused, just to continue from what is left on independence.

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We assume first that there is a secretariat for the forum to assist in whatever project we are going to do and we have in fact the project proposed that is

effective and accountable to the public through parliament, that is a one line item, budget. There was a lot of discussion among the group members on the problems of judicial independence in their respective countries- some of the countries regarding financial control by the executive and that is a bit troubling for some of us and of course there is a sort of problem to address as you can see from there, lack of public accountability and confidence, so we propose a project called effective and accountable to the public through parliament, one line item budget, and that can be done by devising accountability mechanism and the use of funds and second, the fiscal autonomy and three, effective financial management.

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Surely, we all know that as a duty we would like to know, or for that matter parliament would like to know, how the courts would spend the money given but that is how it is, and the methodology that we have suggested is comparative study by the various jurisdictions and then to develop a transition plan and the reason why we say develop a transition plan is you will act with a two-pronged attack, that is one rule system, and then one line budget item and to get into that we need what we call a transition plan, and the next item will be the application of the one line system, that is as I have said that and the assessment, the effectiveness of those matters.

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That is for the judicial independence and the next one is the establishment of indicators, that is the second project that the group has suggested and that is identification of indicators of public trust and confidence and that can be done too by way of annual reports. I understand that most jurisdictional members of this forum have an annual report being done, and the way to do it we suggest, is survey or data collection from member countries, the development of indicators and dissemination including application and the third one that we are considering or suggesting is effective public information service and this was brought up in view of at times, more often than not, the role of the media.

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Instead of enhancing the public confidence in the judiciary more often than not it is the undermining by it and that we have come up with the public relations

project and the methodology that was suggested is comparative study with the more established jurisdictions of this forum's members, development of a model and then sharing of the model system. Now, that is basically the projects that we have come up with to think about, at least three on that, and on education.

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The problems that we have identified is the inadequate training and education in specific areas among the members forum and the project proposed by the group is the continuing regional legal education program through APJEF, that is A-P-J-E-F, and that will include the role of the judicial academies; two, the elements of success from member countries and three, linkage and exchange, that is including the knowledge sharing among member countries, and the methodology that has been suggested is to identify the training needs required but not addressed by respective jurisdictions, and getting APJEF to formulate the training program or modules and three, conduct regional legal seminar workshops on specific topics.

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The next will be the use of web site sharing of experiences, that has also been discussed, I think, by the first group and we propose to allow member countries to open up web sites. That includes, of course, the next one that we have in here, opening of models of judicial positions so instead of each respective jurisdiction being secretive about the contents of their models, so basically that is the group, the second group's view on the proposed project for education and independence. Thank you.

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JUSTICE HAYNE: Again, are there any immediate questions that emerge about that second presentation? No? Where have we got to? You will recall that at the end of the morning session we had a number of proposals brought forward. One of the proposals centred upon the handbook. There was a group of proposals centred upon survey, model, discuss. This afternoon we touch on questions of independence, at least one of the groups identifies that as an area of difficulty. It may be that it is an area where the need to respect difference is a need that will come to play a particular and important part.

And then in education, at least I detected a great degree of similarity in where the two groups separately had got to. Now, where are we to go? Well, for a start I think we need to have some sense of the meeting about priorities. Some sense of the meeting of where the first efforts should be placed. If there were a general  
5 sense of the meeting that some of these ideas should drop off the agenda so be it, it would surprise me if we got to that point because these are ideas that have been generated within the group, it would surprise me if now the general sense were no, no, look, let's drop these ideas off, but it may be that between us we think look, first efforts have to be directed down these two, three maybe, paths. In  
10 choosing them do we have to have regard to time lines; in choosing them should we be looking for one, at least, relatively short term, readily achievable and achieved goal.

Should we be looking for a longer term project that will carry us forward for some  
15 time. All of these are ideas and thoughts that may inform our thinking. Now, where do we go? What is the feeling around the table. Is there a view that has emerged as we have spoken one to another over lunch and elsewhere about where we should go. Richard?

20 JUSTICE D. MALANJUM (Malaysia): Justice Hayne, my view is that there is a general consensus that we should have a priority on the setting up of a secretariat for this forum, and without that the suggestions may fall to the ground.

JUSTICE HAYNE: There is no doubt we have to establish the secretariat. There  
25 is no doubt that we cannot go without it, but Jak, you - - -

MR JAK JABES (UNDP): I think on the first day Anthony put a question which was important. What do countries have to learn from each other, why should they come together and perhaps answer the question of what is there to learn from each  
30 other before one looks into an organised structure and I think that is a legitimate question. I think the discussion today led to a number of - identified a number of areas in which probably countries want to learn from each other. A lot of the

comparative-type studies, if I can call them that, is basically finding out what are you doing and what am I doing and can I benefit from that.

5 I see this discussion basically outside of - if I leave the educational-type projects  
aside for a second, I see all the rest as really there is only one project on the table,  
and it is not a short-term project and that is the reform manual or whatever, the  
judicial reform manual. I think all of the studies really feed into the production of  
a document like this. In a sense there are chapters of that. The problem with the  
10 manual however exciting and sexy that it may be, is that it is not a short-term  
project, it is going to take time to get it going, to proceed to see it to fruition and I  
think it should be pursued but perhaps if there is a move to organise the countries  
around the secretariat early success is important and more than early success,  
activities that keep momentum are important and that - perhaps the easiest way to  
achieve is through an educational project.

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Having said that, I don't think it is any of these educational projects that really  
achieve it in the sense that again many of those will be time consuming, getting  
the web site organised, doing a study on best practices in judicial education, all  
that is time consuming. There may be perhaps faster ways of keeping the  
20 momentum by bringing everybody together in targeted training-type courses.  
Now, I am not saying that this is a big novelty but it is a way to sustain a network.

JUSTICE HAYNE: Yes. In that regard what was the first subject that  
everybody brought up in their individual presentations on day one; backlogs.  
25 One of the projects which came out of the discussions on this side of the table was  
backlogs. Let us understand what others are doing about these things, let us  
survey, let us see if we can develop a model, let us see if we can disseminate that  
model through discussion. Now, the points that are made seem to me at least to  
be points that should provoke reaction. Points, as I understand them are one, we  
30 need - or our needs that are expressed seem all to fall within the manual idea.

Add to that the further reality that we need a quickly achieved tangible output. Where do you look for that or what was the first thing we discussed, backlogs may be there. Now, what do people think of that round the table? First, what about the notion that the manual is really the umbrella that is encompassing all of these ideas that have been discussed between us. I see some nodding of heads, I see some staring at the papers.

MR ANTHONY TOFT (World Bank): I worry about handbooks and I am not against it at all but I am worried - the World Bank has a history of producing really good reports that never get read and I think it is really important not to go down the road of producing a term that tries to be all things to all people and winds up being of marginal use to each. I am not against the handbook but I caution - that shouldn't be the - I wouldn't put all my focus on producing a handbook. Amongst other things it would take an awful long time. You think of the variety of - I mean, we have covered the actual gambit of very complex issues and you will never get that if you try to cover them all, so I actually agree with what you said about picking out some immediate objectives.

The other thing that struck me is just how many projects there are and it is very easy to generate wish lists and again, a wish list can very easily translate into very little tangible output, so that is just one observation. Another observation is that for this forum to work it is extremely important that everybody contributes. This is not a question of some participants being the input and others taking those inputs. I think everybody almost certainly has to learn from each other but if it becomes a pass through from one group to another and simply that, again this forum will not survive, so I urge people to think through how they are going to contribute which is actually the third point that I wanted to make, that the real hard work is now, I mean it starts now in terms of how do the various participants when they go away, what are they going to do; wait for a newsletter from the secretariat, wait for a summons to the next semi-annual meeting?

Again, that is not a recipe for a sustained success or even success at all, so I urge each of you to think in terms of how you are going to contribute. I obviously - obviously everybody assumes that there will be a secretariat and it is obviously necessary and appropriate but don't start at the secretariat because it is not going  
5 to be very productive.

JUSTICE HAYNE: Please?

JUSTICE ANTONIO T. CARPIO (Philippines): Well, two things. First the  
10 Philippines supports the creation, establishment of a secretariat and we also propose that the secretariat be housed in Australia, be handled by the Australian group. Second, on the handbook, I think there is a solution to the time problem. Right now many countries have undertaken reform projects that will form part of the handbook. Now, these countries have already documented these reform  
15 projects.

For example, the justice on wheels of the Philippines, we have documented that already. The e-Library we have documented that already. We can give you a paper on how to set up e-Library. Australia can document how to prepare a bench  
20 book, what is an example of a bench book, so all these projects can be documented right away, circulated among the members and as we go along we will compile this and eventually this forms part into one comprehensive handbook so there will be a quick win here, an immediate result which can be used by the member countries.

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Like, we can send everybody copies of our mobile court system, how we set it up, the specifications of the buses, how we go around the country with it, and it can be of immediate use already by the member countries, and then we get feedback, we refine it and eventually this will form part of the handbook. The same thing  
30 with the e-Library, with the bench books, with the case flow management, so we don't have to wait for two years or three years, it can be done immediately. Everybody can benefit with what each other is doing right now. Thank you.

JUSTICE D. MALANJUM (Malaysia): But if an immediate result or an immediate action to be taken by the group perhaps this group can consider the proposal by the group here, tackling the backlog of cases, and that is the backlog reduction plan whereby each member will contribute in a way what they have done to tackle the backlog and from there we exchange ideas. Maybe country A will want to adopt some part of country B's action plan to handle their backlog and vice versa. Maybe that is one way of seeing the result within a shorter period than two years or so.

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JUSTICE HAYNE: Yes. Well, does that suggest - let us take for a moment the backlog reduction plan. Does that suggest that we should at this meeting establish what each country would be invited to submit by a specified time to begin to provide a framework for further work on the backlog reduction plan? That is, do we come to that level of detail or is that a bridge too far?

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JUSTICE ANTONIO T. CARPIO (Philippines): Mr Chairman, I think for the backlog problem, if there is any country here that has successfully solved the backlog problem, they can document that activity, explain how they did it, and circulate it to the members.

20

JUSTICE HAYNE: There is of course a rare possibility that that may turn into a public relations release for the Court concerned rather than an analysis of where is the problem, how was it identified, and what is to be done about it, or perhaps I really am showing my cynicism. Jak?

25

MR JABES (UNDP): Coming back again to the question that Anthony posed this time - today not yesterday, which is what is everybody going to do, and I think it's an important question. Now, I want to give an example. When we launched what we call the ADB OECD anti-corruption initiative, we did it around an action plan. The action plan is a declaration not much unlike the Manila declaration. It has long, you know, flowery language, all the things you want, but

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in the end there is something which this one does not include, which is every country that endorses this agreement is committed to undertaking and reporting between one to three anti-corruption reforms over a period of 12 to 18 months.

5 So when you come around the table you have an obligation to report and you are reporting to peers and let me tell you, it's really led to an extremely rich discussion and everybody has learned a lot from minor to major reform projects. That's something perhaps that everybody can use, whenever there is a next time, and it shouldn't probably be very soon, is an obligation to report on ongoing judicial  
10 reforms in the country, or a commitment to at Supreme Court level or whatever Court administration you are representing to undertake a reform project and report on it.

JUSTICE HAYNE: Yes. John?

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JUSTICE MANSFIELD (Australia): Mr Chairman, the group that discussed the backlog problem and came up with that project did talk about time lines as the presenter indicated and we did have - - -

20 JUSTICE HAYNE: Yes. A two plus two plus two.

JUSTICE MANSFIELD (Australia): - - - in mind the two plus two plus two with the secretariat once established in fact engineering the flow or managing the flow of information from each of us here so that that project has the benefit of all of the  
25 participants here having to participate in the information-gathering process, or the information-provision process, then allowed for a period of time of writing up and circulating a draft and contemplated that a draft document containing model suggestions or some suggestions for resolution of backlog problems would be addressed in a forum like this again in about six months' time.

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So it does have the benefit of involving everybody and making us all do some work, which I think is one of the points that Anthony made, that we should all

have to do some work, and bring us all together again in a reasonably finite time with an outcome. In the longer term, I note one of the suggestions for the handbook is chapter 2, Case Management, of which the backlog problem and the way it is addressed would be a step along that process. So it seems to me that it has a particular set of advantages now and it could be done in a way which doesn't contain the sort of prescriptive conduct which would lead to the sort of things that Jak is talking about which can be used to haunt us later on.

JUSTICE HAYNE: Yes. Where are we up to? What is it that this group wants to achieve by interaction with others? All of us want to learn. All of us want to offer what we have to offer. Is there a project other than the backlog project that we should be considering initially? Is the backlog project at the top of everybody's list of short-term projects? Peter?

JUSTICE McCLELLAN (Australia): Can I just say this, with every respect to Anthony. I'm not persuaded, Anthony, that this group shouldn't be looking towards a large project as well as smaller projects and defining a large project today. I have in mind that if we do that we will have set ourselves a long-term goal which my discussions with Jak suggest is important to the success of an organisation such as this, but Jak, it's for you to speak on that not me. But I do detect from my discussions with both of you that there may not be a commonality of approach and for my part I am significantly persuaded that it is in the interests of the viability of the forum longer term that we embrace one long-term project.

Having said that, I think it also essential that we be able to provide within a short time-frame an indication of real outcomes from the group. Can I just return to the website project? My understanding, if I didn't make it plain earlier from Ernie Schmatt, who has been involved in this sort of activity for some time, is that we should be able to achieve positive outcomes in relation to that project within a short time-frame and there may not be a direct cost to this organisation but there may be a need to assist worldly, if that's the way it was to go, to be able to access funds to support its site, expanded to accommodate our needs.

Secondly, I would put together the project to provide a newsletter and effective judicial exchange as a project which has immediate capacity to be not only initiated but start to provide outcomes. Again, we're not talking about significant resources from this organisation, but you're talking about an outcome which will provide real and effective communication between all of the member jurisdictions which of course includes many jurisdictions who are not here today.

If they see this organisation as able to provide them with positive information about the opportunities for judicial exchange, the programs which each country is providing for its own members, which they might be encouraged to join in, then I suspect that it will be a vehicle to encourage a bonding between the whole of the countries within the network and an understanding quickly gained of the benefits which might be mutual flowing from the activities.

As far as the backlog project is concerned, it's plain that there is a need for everyone to address backlogs. I suspect, however, that although we can talk about it as a quick project, the reality is it will take a lot longer if it's to be effective because what you will be doing initially is identifying those countries with a problem and everyone will put up their hand, but the solution for each country may be quite different because the cause of the problem may be different. For some countries, it may be a judicial-resource problem, it may be a Court-administration problem, it may be an information-and-knowledge-storing problem.

There could be all sorts of reasons why there are backlogs and I suspect that the project which has great worth may be longer in delivery than we presently contemplate. And my concern would be that we identify today projects which are relatively small but which can achieve observable outcomes by the end of this year so that we are able to communicate effectively to all our members, that we are able to achieve things and hear of the results. I also again though go back to it, I think it's important that we identify for ourselves a long-term project, one of

significance which will take of course time and resources, but nevertheless supported by an understanding that we're able to achieve short-term projects will provide all of us with a long-term goal.

5 JUSTICE HAYNE: Just on the net. I've put up the World Legal Information Institute site which is a sub-set of the Australian Legal Information Institute sites. You see the databases. You go to the Asian databases. You see the range of information that is there. The Malaysian Court of Appeal 2002. Forward. Malaysian Federal Court 2003. Forward. The Philippines. Philippine laws are  
10 there. The main named decisions but at the moment none others. Vietnam and so on. An evident point at which to join. That's perhaps at one level a distraction but it's out there. Now, back to the more pressing issue, however. What is this group going to come away with today? What is the sense around the table about the desirability of a long-term project?

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JUSTICE ANTONIO T. CARPIO (Philippines): Mr Chairman, there was a proposal to set up and to produce a handbook. We support that proposal.

JUSTICE HAYNE: I gather that from what Peter said that he would certainly  
20 support it and I think the others of the Australian delegation would support it but what is the feeling around the table?

JUSTICE D. MALANJUM (Malaysia): The other thing the group should think  
25 seriously about is establishing a system of knowledge sharing among members. I think that will be of more immediate benefit for everybody.

JUSTICE HAYNE: Yes. The next question will undoubtedly be - that may be a  
30 long term goal but what are the immediate goals? What are the immediate tasks but on the long term goals? What is the feeling please?

MS IBU WIWIEK TRISNOHANDOKO (Indonesia): Thank you very much. From Indonesia I think we agreed to support the priority program of this forum for backlog reduction plan as well as optimisation of ADR. Well, maybe we have a very subjective reason because we are going to have this program immediately implemented under our group plan so I think it is really good if this can be in line with the forum. The second that we like to support here is the secretariat. I think we agreed to have Australia as our secretariat at this stage. Thank you.

10 JUSTICE HAYNE: Yes. Are there more who would want to contribute on this question of long term goals? What about - yes, please?

MS P. KRYUCHKOVA (Russia): I think there is no contradiction between the ideal of some short term and long term project. In fact if we look at the possible structure of the handbook it is consistent with six, seven or 10 short term projects. Thus I think we can start with the short term projects taking into account that it is a part of a long term project and that is a solution. As we go step by step then we can build the handbook from different parts in three years, maybe in four years, but on the other hand we have some intermediate results, some short term results, which is very important for the survival of reform.

20 JUSTICE HAYNE: Thank you. Now, short term. Indonesia has spoken in favour of backlog reduction as a short term project. Let me come in a moment to precisely what we are going to encompass by that notion because there I think lies a real question but backlogs - - -

JUSTICE D. MALANJUM (Malaysia): Education, I think, as well.

30 JUSTICE HAYNE: And what particular aspect of education, Judge?

JUSTICE D. MALANJUM (Malaysia): Very much exchange of - - -

JUSTICE HAYNE: Exchange.

JUSTICE D. MALANJUM (Malaysia): - - - programs or training, whatever.

5 JUSTICE HAYNE: Yes. Other candidates, please?

JUSTICE HU YUNTENG (China) (Through Interpreter)

10 THE INTERPRETER: The long term plan for China's proposal is the training of  
the judges. Education, it would be more properly to say. The short term plan is  
the infrastructure of the local courts. Eighty per cent of the backlog actually in  
China is around the local court and district courts so the infrastructure  
improvement of these courts serves to get rid of the backlog. Of course we can  
work out quite a few ways and means to improve the situation as far as backlog is  
15 concerned. For instance ADR is one of the ways, implementation of the  
simplified procedures, and also set a time limit on the decision of the judgment,  
and also the technology introduction in Court.

20 We really need to have detailed discussion as which ways and means is the best  
and should be adopted as a priority. As far as the secretariat is concerned in the  
morning we have expressed our view that serving as an institution of  
co-ordination for the judicial reform in the Asia Pacific regions, we propose that  
we set up a standing secretariat for our long term plan. However, the location of  
the secretariat should be based in consideration of the following factors.

25 First of all the country where the secretariat is located, this member country  
should be active and have the motivation to run this program. Also the courts and  
the administration executives in this country should provide due support to the  
secretariat. And thirdly, this location should be easier for other programs to  
30 implement, for instance all the international activities and also this country should  
be generally approved by most of the other member countries. Thank you.

JUSTICE HAYNE: Thank you. Please?

JUSTICE ANGELINA S. GUTIERREZ (Philippines): This morning you gave us four topics to be discussed and from there for us to propose the themes and the issues such as expedition, access, education and independence. May we propose for each topic that a project which involves short term performance be adopted. For expedition we have already proposed the issue on backlog. For access we propose the plan to enable the marginalised to have access to the courts. For education the use of web site. For independence we propose suggestions so that the courts will be independent from outside pressures.

JUSTICE HAYNE: Yes. Thank you.

MR VORAVUTHI DVADASIN (Thailand): Yes for Thailand. We support a long term program for publishing the hand book, and for the short term we think that the back log problem we have to deal with the measures that deal - that handle with the problem. I think that the measure is the case management, and the use of ADR, and as far as the secretariat is concerned I support Australia to be the secretariat. Thank you.

JUSTICE HAYNE: Thank you. Can I try to draw it together? It may be premature, but I hope not. My sense of the meeting is that we should go forward with in mind the hand book project as the over all umbrella that should be adopted by the forum. In order to achieve that our immediate focus should however first be on some short term objectives. Let me put forward some specific identified ideas for your consideration. Firstly, back log. That each of the representatives should be invited, one, to submit through the secretariat, for the use of other members, or the information of other members, a paper setting out what that jurisdiction sees as the appropriate methods for identifying back logs. Two, what that jurisdiction would see as the appropriate methods for dealing with back logs, with existing resources.

Step three, however, you may open your minds a little. What those jurisdictions would see as the means for dealing with back logs through adoption of new resources, or new techniques. Of course among those will feature ADR, but I do not think the third class is limited to ADR, and the third class will bring us all  
5 hard up against those resource issues which confront every Court in every country around the world. That's why steps one and two are of such importance. How do we as a jurisdiction identify whether we have a back log? Do we go into the file room and faint, or do we do something rather more precise, and what do we do about it within our own existing resources? That will take some real ingenuity,  
10 and some real thought.

Category two, in no order of importance yet, education. What are we going to do about the web sites, and dissemination of information? Again should not each jurisdiction submit, through the secretariat, for the consideration of all other  
15 jurisdictions, as precise a formulation of their proposed web solution as they are able to make, bearing in mind if you will the existing resources. That's why I pulled up the WorldLII source, simply to show you something of what's out there already. We do not have to reinvent the wheel here. Let us not. We have enough to do without doing that. Category C, access. For the moment at least I find that  
20 much more difficult, not quite as difficult as category D, independence. That I regard as the hardest of them all. Category C, access. The proposal is to focus upon the marginalised. I understand why that should be so.

But what is the way forward with it? A lot has been written about access to  
25 justice, a lot has been spoken about this topic. How can we refine that to produce something that is of value? May I suggest something? It is that we identify from within our own jurisdiction's experience the single best, or if you will, the pair of best steps that have so far been taken, that have assisted access to justice. So what have you done that has assisted? I think many of us may learn much from seeing  
30 what has actually been done. By all means then go on and say, and what we think might work would be, but may not the focus best be upon what we have done so

far that has proved good, even to the extent of half of one per cent has been this or this. And the fourth category, the hardest of them all, independence.

5 May I counsel us all that we need to tread carefully. Here, above all else, we may need to respect difference. Our nations are different, our societies are different, our governments are different, our judicial systems are different in many respects.

10 Long may that be so. But, yes, let us refine it again. What are the principal suggestions that you would make if asked to identify what is common to all systems in connection with judicial independence? Now, that I think is a difficult task. I think it is, to my mind, rather too fuzzy, but at the moment I think it is perhaps the best we can do. This is a difficult journey, any journey on the subject of independence. Let us take a very short and tentative step about it first. Let us begin however with the subject that we all mentioned first, back logs.

15 How do you tell whether you have got a back log, how do you deal with it with what you have got, how would I like to deal with it if I had some new resources, or some new techniques? And the answer of appointing three times as many judges as I have is perhaps not a practical answer to give, though it is one which I rather suspect many jurisdictions would dearly love to be able to give. But there we are. Now, I have gone, to use a very good Australian expression, I have gone out on a limb. I am up a tree, I am out on the branch of the tree. At the moment I am probably hanging on by a few leaves, having been so prescriptive as I have. Never ask a judge of a Court of Final Appeal to chair a meeting.

25 Are there comments, suggestions, about what I have put forward? Or do I retreat to the technique which I always longed to follow when appearing in number one High Court in Canberra. You stand behind a lectern, which is rather larger than this, and at the foot of the lectern there is a bar, which adjusts the height of the lectern. And when the Court's questioning became unduly intense, which of course has all changed since I joined the Court, I longed as counsel to put my foot on the bar and watch the lectern rise majestically, so that I could hide behind it. It's about where I feel at the moment. Now, suggestions, comments, please?

JUSTICE D. MALANJUM (Malaysia): Justice Hayne, as I say, I think I have synthesised the common ideas that were contributed by this forum very well, and I support that.

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JUSTICE HAYNE: Good. Are people content?

JUSTICE ARUN KUMAR (India): India supports that proposal.

10 JUSTICE HAYNE: Okay. Okay. Now, secretariat - I have left until the last. People have been good enough to suggest Australia. Australia is willing to take on the task, but are people willing that we should do so?

JUSTICE ARUN KUMAR (India): Yes.

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JUSTICE D. MALANJUM (Malaysia): Malaysia supports that.

20 JUSTICE HAYNE: If you are willing we will undertake it. If you are not willing we will not. But - thank you. Now, have we come to the end of our journey for this part of the exercise? I think we have. May I say to all of you - - -

JUSTICE McCLELLAN (Australia): Can I just say - - -

25 JUSTICE HAYNE: Please, Peter.

JUSTICE McCLELLAN (Australia): I think there might be one or two matters that arise. Australia is happy to take on the secretariat, but the guidance for the secretariat will have to come from somewhere.

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JUSTICE HAYNE: Yes.

JUSTICE McCLELLAN (Australia): And secondly I think we need to just give thought to next formal gatherings, of which there may be two. One, another working party, and two, major gathering of the region. But I am sorry to interrupt, but I think - - -

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JUSTICE HAYNE: No, please.

JUSTICE McCLELLAN (Australia): - - - they are things I think we do need to talk about.

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JUSTICE HAYNE: Yes. Well, please, why not say more about them, Peter.

JUSTICE McCLELLAN (Australia): Yes. Well, can I say this? As far as the guidance of the secretariat is concerned I very much would like to see Justice Hayne, from the Australian point of view, remain our guiding hand, but I think there may be a need - - -

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JUSTICE HAYNE: My Chief Justice has given me no choice, I am sorry.

JUSTICE McCLELLAN (Australia): I didn't know that, but I will thank him. But I do think there is a need for perhaps identification of at least one, if not two, perhaps other countries, who, together with Justice Hayne, through the secretariat, become a guiding hand, at least for the next interim period. And it may be that Malaysia, maybe the Philippines, maybe Thailand, China, India, but I suppose really it may be a matter of question of asking people to put up their hands. What I would have in mind happening is the secretariat will be doing the work, but there will be a need for guidance from time to time, which may mean the secretariat consults by email, I suspect, through Justice Hayne, with any others who are prepared to assist in this guiding hand. We can come back to that.

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Now, as far as the next working party meeting is concerned, everyone in the room probably knows now that yesterday I spoke at length with Richard about whether

or not Malaysia might be able to host the next working party, which I would see as necessary, certainly within 12 months, probably within six months.

5 In other words some time this year, and, Richard, I respect and I know that you need to consult, but if there was anyone else in the room who was happy to put up their hand to host a working party meeting, which would be similar to this meeting, then I am sure we would like to hear from them. But secondly it seems to me we need to put in place at this meeting a longer term objective for another major gathering of the region. I have in mind that such a meeting should happen  
10 maybe every three years, certainly no longer than every four years apart.

Amongst other things I support Jack's idea very much that we should now turn our attention to that major gathering being a time when member countries can report on what they have been able to achieve in the way of reform, and what they  
15 have in mind for their future programs in that area, and I see it as a gathering perhaps over two days, maybe three, with a program designed to assist all of us to come together and understand what is happening.

But also therefore, and we are putting it bluntly, peer pressure will operate, so that  
20 the under performing will be encouraged to perform better when they see what the member countries, the other member countries are doing. Now, again I am afraid I haven't been silent, but I have mentioned to the Chinese delegation whether they might be able to consider the hosting of a major conference, perhaps in 2007, and again I very much respect the Vice President's need to consult in relation to that.

25 But, again, if there is another country that would feel able to host such a gathering I am sure we would like to know about it. I hope I haven't been too blunt in putting those things forward, but I do think we need to address all three of them.

30 JUSTICE D. MALANJUM (Malaysia): Justice Hayne?

JUSTICE HAYNE: Please.

JUSTICE D. MALANJUM (Malaysia): Thank you, Peter, for the kind invitation. I have submitted the proposal to our Chief Justice, and he has yet to respond. So I don't know when. Hopefully most likely it may be when I go back,  
5 and I will then do the necessary emails.

JUSTICE HAYNE: Yes. As for consultation, could I suggest that the secretariat in any event should be consulting, at least to the extent of keeping everybody in the email loop of communication, everybody who is represented at this meeting  
10 today. To that end it will be important that we have up to date email contacts, so that we may keep you in the loop of what is happening. Inevitably I think that there may be consultation between smaller groups. I hope there is. Such consultations will be valuable, but I think that for a start we have to keep everybody who is here up to date with where we have gone. What we cannot  
15 afford to let happen is to drop this off the horizon.

Which brings me to the little surprise that I was perhaps saving up, namely timing, the timing for presentation of papers. The paper on back logs has, I think, to be made available preferably by end May. That is two months hence. The  
20 other papers I think we put out a little further. I would suggest end July for the other papers, but the back logs paper is pressing. It is pressing each jurisdiction, so let us aim to have those papers available by end May. That is two months time. And then I suspect what will happen is that the exchange will begin, the refinement will occur, there will be a process of development from there of  
25 course. But end May. John?

JUSTICE MANSFIELD (Australia): Chairman, can I just follow up on what Peter suggested. My impression of these two days has been an immensely positive one in the sense that everyone has contributed, both publicly and  
30 privately. Whilst I appreciate that we may not be able to select venues I think it would be good if this forum were to express to the secretariat the desire that, if appropriate, we would have another working group meeting in about six months

and again to the secretariat we express the desire if appropriate that we have a major regional gathering in 2007 and then the community that we comprise can be consulted about where those meetings should take place but I think it would be good to have some forward projection of commitment of meetings.

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JUSTICE HAYNE: What is the feeling around the table about that? Are people content that we aim towards another working party in six months and a general meeting in '07?

10 JUSTICE HU YUNTENG (China) (through Interpreter)

THE INTERPRETER: The delegation from China would like to make a proposal. The first issue is the location of the secretariat. We have no objections if the location be set up in Australia. However, since quite a lot of countries are from Asia we tend to think that maybe a branch office should be set up in one of the Asian countries. In consideration of the language barrier, the language proficiency and the motivation, we set that this branch office should be set up in Philippines. As to the next conference this is a big issue. We need to follow the reporting procedure in China so we cannot give you a definite answer today. We will make a report to our superior. Thank you.

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JUSTICE HAYNE: We are greatly indebted to you. Thank you. Now, the branch office idea and continuing the connection of the Philippines, most notably Ms Dumdum's connection with the proposal, with the secretariat and arrangements, would you, Ms Dumdum and the Court generally be willing to provide your good officers in conjunction with the Australian organisation so that there is an immediate and apparent Asian connection with the organisation?

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JUSTICE ANTONIO T. CARPIO (Philippines): Mr Chairman, we will be happy of course to serve as another branch office. If there is a need we will do whatever is necessary. We commit that to the group.

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JUSTICE HAYNE: That is very kind of you. We are very grateful.

JUSTICE ANTONIO T. CARPIO (Philippines): When the time comes, when there is a need, we will be prepared to serve as a branch office.

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JUSTICE HAYNE: That is extremely kind of you. Thank you. Peter have we picked up the matters which you would wish to pick up? Are there other - - -

MR DANIEL ROWLAND (AusAid): First of all I think I should introduce myself. My name is Daniel Rowland. I am AusAid's law and justice adviser. I do apologise for not having been here until this afternoon. In fact I was at a gather in Suva in Fiji of a number of law and justice programs that AusAid helps and assists with around the Pacific and so it is perhaps a bit presumptuous of me at this late stage to simply fly the flag for the "P" in the Asia Pacific Judicial Reform Network but I think the work that you are suggesting as a group that you will be doing for example in case backlogs would be of enormous interest to 15 Pacific island countries and without their blessing and not necessarily only making this comment in direction of those 15 Pacific island countries but perhaps also for other Asian countries that are not represented here, might you think of a process for disseminating that early work on case backlogs to chief justices or appropriate persons within the larger Asia Pacific group for internal dialogue and to consolidate the notion of it.

JUSTICE HAYNE: I am sure that everyone around this table would see not only the desirability but the in fact pressing and urgent need to do so, Daniel, and we are grateful for the suggestion as we are grateful for you coming directly from the airport to join us now.

JUSTICE D. MALANJUM (Malaysia): Just one small suggestion, would it be possible to get the transcript for the minutes of this forum as soon as possible, to act as a guide for us to formulate things?

JUSTICE HAYNE: Look, I am sure that can be done. I defer to those who are administering the matter, particularly Warwick Soden, who has had to go off to another thing but yes, we will do that as soon as we can.

5 JUSTICE D. MALANJUM (Malaysia): By email will do.

JUSTICE HAYNE: Yes. Now, ladies and gentlemen, I think we have come, have we not to the end of this part of the journey. May I thank all of you for coming, may I thank all of you for the contribution that each of you has made. If  
10 we have had success over this last two days, and I am bold enough to think we have, that success is your success. It is your success because of the work that you have done.

At the end of the day the question will remain, what does each of us want to  
15 obtain from participation in this group? Unless we have something that we wish to gain from participation in this group, this group will wither and we must therefore contribute as you have today, we must take as well as give because unless we have things that are worth exchanging and we want to exchange, this group will wither and die and that would be a profound shame. So to you all,  
20 thank you, thank you for coming to Australia. Please.

JUSTICE ANGELINA S.GUTIERREZ (Philippines): Your Honour, on behalf  
of the Philippine delegation who are all present now, and on behalf of the Supreme Court especially of our newly appointed Chief Justice Artemio V.  
25 Panganiban, I would like to extend our utmost gratitude and appreciation to your Honour and all your supportive staff and all our development partners for allowing us to attend this very enlightening conference. We will always cherish your kindness and all the good memories, you know, we have attained during this conference. Thank you.

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JUSTICE HAYNE: Thank you very much.

JUSTICE D. MALANJUM (Malaysia): Justice Hayne, I share the sentiment expressed by Justice Gutierrez from the Philippines but may I add something more. I congratulate you for such an ability to handle such a forum being the first one of this kind and may I invite everybody to give applause.

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JUSTICE P. LOTULUNG (Indonesia): Mr Chairman, on behalf of the Indonesian delegation we would like also to express our gratitude and especially for this meeting that can support us for the backlog cases in Indonesia and we thank also the Australian host for the hospitality and we thank also for our colleagues, your Honours and we meet again in the next meeting. Thank you.

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JUSTICE HAYNE: You are most welcome.

JUSTICE ARUN KUMAR (India): Justice Hayne and the judges from Australia, I take this opportunity for us to congratulate you for this successful meeting that we had. I thank you for the excellent arrangements and the manner in which it has been conducted. You deserve all the best and congratulations on this. Thank you very much.

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JUSTICE HAYNE: Thank you Justice Kumar.

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JUSTICE SHENG DEYONG (China): On behalf of the delegation from Supreme People's Court of China I congratulate you and congratulate the establishment of the secretariat and I regard that this working party is highly successful. During this working party we have met our old friends and we have made new friends. I would like to express on behalf of all the members of the delegation your hospitality care and kindness during the two days meetings, for all those judges from the High Court, Federal Court and New South Wales Supreme Court. We sincerely hope that you will have a chance to visit China and we will repay your kindness. Thank you.

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JUSTICE HAYNE: Thank you, Mr Vice President, I appreciate that. Thank you very much - forgive me.

5 MR SOBCHOK SUKHAROMNA (Thailand): Mr Chairman, on behalf of the delegation from the Supreme Court of Thailand I would like to express sincere thanks to you for your kind co-operation, your kind knowledge and some knowledge is really valuable to us and we will take it and improve our system in the near future or in the long-term basis. Thank you very much.

10 JUSTICE HAYNE: Thank you, thank you very much indeed.

MS P. KRYUCHKOVA (Russia): Thank you very much for this matter.

15 JUSTICE HAYNE: Thank you very much indeed. Thank you.

JUSTICE D. MALANJUM (Malaysia): Justice Hayne, one more small thing we forgot about with us. I wish to thank Elizabeth and her team for making such a good arrangement for all of us. Thank you.

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JUSTICE HAYNE: Hear hear, hear hear. Thank you. Ladies and gentlemen, I declare the proceedings closed. Thank you for your attendance.

**PROCEEDINGS CLOSED**

**[3.32pm]**