

## **WLCU – At the Crossroads:**

**Government by the People for the People**

**or Anarchy by the Few over the Many**

### **Introduction**

It is my singular privilege and honour to address the 17<sup>th</sup> World Congress of the WLCU in Mexico City. It should not be lost on those attending that the significance of the Congress being held in the birthplace of the WLCU is both symbolic but nevertheless very critical to the issues that now face the organisation and upon which I am asked to address.

Today, I want to focus on the concept of “**corporate governance**”, as it applies to the WLCU and to the recent attention given to the failure to implement and have brought to the fore many overdue and long-needed reforms, in particular the following:

- A completely new Constitution, containing not only the organic constituents of what a constitution should be for effectively a transnational body, such as the WLCU; and
- A Constitution that, of itself, has within the one document all internal and external powers and procedures that will give a uniformity and a homogeneity to the Constitution, irrespective of race, so that each and every member throughout the Diaspora identifies with the body in question.

It is on these issues that I seek to canvass and critically assess the state of affairs, such as they exist, and why it is that this Congress should contemplate and proceed with due deference to the procedures in place, to ensure that the democratic sentiments embodied within the Constitution are upheld and not in any way emasculated.

## **Corporate Governance**

When one looks to the concept of corporate governance it is, in my respectful submission, a very vague concept.

Although many ideas about corporate governance have an international quality, each country has approached it against a background of its own distinctive culture. In Australia, where I am more familiar with this concept, one sometimes has the impression that it lies somewhat uneasily between the culture of the outlaw and that of the regulator.

If we adopt the position that corporate governance is about the legitimacy of corporate power, corporate accountability and the standards by which the corporation is to be governed, and by whom, it is obvious that the concept transcends legal standards and liability, perhaps reflecting the fact that the law deals with the minimal morality of obligation rather than a morality of aspiration.

In my opinion, corporate governance and the debate concerning the same is often about the method as opposed to the substance of corporate decision-making. Nevertheless, it seems to me too narrow to limit it exclusively to questions of method and good housekeeping.

What I ask you to consider here in this Congress is the residual question as to whether the evolving structure of the WLCU in the Diaspora against the norms of global corporate governance require a form of global law without estate; in other words, to reflect the existence of the WLCU beyond the borders of any one particular country, let alone geographical region.

It was the very famous Austro-Hungarian Sociologist Weiss who wrote that: “The centre of gravity of legal development has ... from time immemorial has not lain in the activity of the State, but in society itself, and must be sought there at the present time.” What the WLCU requires and what I am endeavouring to impart to you here today, is that the idea of “living law” which transcends nation States and the conventional legal sources and form must have the ultimate appeal in this, as in other areas of life, where people choose to come together to form co-operatives and more importantly, associations, by their will and aspiration to achieve what are matters of concern for the establishment of a body that will recognise and propel, if not nurture, the aspirations by which each and every individual has collectively come together.

### **What then of the corporate governance as it exists in the WLCU Constitution?**

When one looks to the WLCU Constitution referred to as the “**Basic Constitutional Law**” it is, of itself, a misnomer.

For my part, as the legal adviser to the World President and World Secretary-General, a position I have treasured and felt honoured to hold from time to time, I have, on occasions indicated to past World Presidents the need to revamp the whole of the Basic Constitutional Law.

Why is this so? Simply put, the document, with the best endeavours in the world and with the most noble of intentions by each of its framers, does not encapsulate in any way, or shape, or form, for my part, as a lawyer, the very essence of corporate governance. In fact, the WLCU is not a corporation but it relies upon principles of corporate governance, if not analogously then in like terms, to seek to bring a system of law and order to the many diverse national groups throughout the world who proudly form and boast of themselves as a collective under the banner “World Lebanese Cultural Union INGO Associated with the DPI of the UN”.

When one looks to **Article 1 Name of the union: World Lebanese Cultural Union**, it then goes on to define the WLCU as a “... civil institution, with independent and non-governmental, non-political, non-ethnic or racial, non-religious, non-profit

making". It is recognised as the sole representative of the Lebanese Diaspora in the world. It has an unlimited duration and is subject to its basic constitutional law and to its internal regulations.

This, of itself, is a contradiction, insofar as the WLCU is effectively of a particular, if not emphatic ethnicity and is equally racial, if not robustly so, embracing the Lebanese nationality and its national aspirations and the descendents of those Lebanese nationals who have, throughout the world, formed the Diaspora.

By **Chapter 2 Objectives and Measures** the WLCU declares that its formation, existence and operation is encapsulating those matters that are within **Article 3** and then, more particularly, by virtue of **Chapter 3 Membership and Affiliations, Article 5** the WLCU is said to be composed of:

- Chapters,
- Clubs,
- Societies
- Confederations
- Institutions and Unions

that comprise Lebanese nationals and descendants of Lebanese origin who believe in Lebanon as a final homeland to all its people, and who are not members of establishments that have contradicting objectives to the existence of Lebanon.

By virtue of **Article 6**, the WLCU comprises known members throughout the following geographic regions:

- Africa
- Europe

- Brazil
- Spanish America and the Caribbean
- USA and Canada
- Australia and New Zealand

In terms of “*corporate accountability*”, and one must use that term very loosely, it is **Article 8 – Members of the WLCU**, where it is provided that in the said regions, members will comply with the objectives of WLCU. The basic constitutional law and internal regulations of the WLCU become applicable to the members through their mere affiliation to it. The conditions in terms for affiliation of Chapters, Clubs, Societies, Confederations, Institutions and Unions to the WLCU are defined in the internal regulations.

In **Article 9** the twelve organisations that comprise the WLCU are thereby set out and it is in **Chapter 5 – Resources of the WLCU** and in particular **Articles 13-14** that constitute the financial strength of the WLCU in terms of its ability to finance its administration.

### **Internal Regulation**

By **Article 16** the internal regulations of the WLCU are attached to the Basic Constitutional Law and, in terms of its enforceability, it is provided that: “They are considered a complementary part of it.”

It is then that **Articles 18-21** set out that the various World Congresses and the amendments made in those Congresses that effectively seek to change, if not incorporate the amendments made from each World Congress, so that the evolving nature of the WLCU and its commitment, but equally the commitment it seems from its members and constituent bodies, are made available and more importantly amenable to the dictates of the World Congress, as the ultimate democratic forum.

Sadly, the failure to comply with and ensure that proxies, registration of Chapters and the ability to commit revenue and remit that revenue, has left the WLCU in a parlous, if not pathetic state of affairs, when it comes to democratic representation and fulfilment of that representation in the attendance and the participation of the World Congress.

Again, if one simply can put the state of affairs, the WLCU cannot continue to exist if procedure is both ill-defined, uncertain and there is a failure to gather as a constructive conclave, to ensure and enact that a regime of regulation is sought and implemented for the welfare of all and sundry. In that regard, the WLCU must take note of what is occurring internally, and the impact it is having externally on it. It is now a NGO affiliated as a DPI with the United Nations. In that regard, it has solemn obligations which I am afeared to say are not being achieved, let alone realised.

### **United Nations Centre on Transnational Corporations (CTC)**

The way forward, as I see it, for the World Lebanese Cultural Union is for it to effectively set up, by this World Congress, a Committee, which I would be prepared to work with as a lawyer, to establish a transnational corporation (TNC). The United Nations, as long ago as the 1970s, set up the Centre on Transnational Corporations to gather and disseminate information on bodies such as multi-nationals, and an intergovernmental commission on transnational corporations to act as a forum for discussion of issues relating to them and to supervise bodies of a transnational stature.

For my part, whilst such regulation of entities as vast and as financially formidable as a transnational corporation akin to a body such as the Ford Motor Company or Microsoft, better still the Apple Corporation, nevertheless the theme, if not the idea of a transnational corporation is, I think, the most useful vehicle forward for the WLCU

There was set up a round table on the code of conduct of transnational corporations which, of itself, saw benefit which can equally be applied to the WLCU in a very modified fashion, such as the following:

- To establish a balanced set of standards of good, corporate conduct to be observed by the WLCU as a multi-national organisation in its operations and standards and to be observed by the various geographical councils in the manner in which their members are organised within those geographical councils and ultimately at the world level.
- To ensure that the activities of the various geographical councils were integrated in the development of policies for the World Lebanese Cultural Union as a transnational corporation.
- To establish, inter alia, the confidence, predictability and stability required for development of participation by members from the disparate geographic regions but in a mutually beneficial manner.
- For the WLCU to contribute to a reduction of friction and conflict between the various geographical councils but more importantly to achieve a homogeneity of constitutional association within each of the geographical councils and their individual constituent, WLCU regional council, irrespective of whatever constitutional documents govern the constituent members who in turn make up the regional council bodies.
- Finally, to encourage positive adjustment throughout the world to the growth of a singular WLCU in order for it to attain and confidently progress with its work throughout the Diaspora and in the forum of the United Nations in which it has recently become established and with which it is also singularly focused in terms of assisting the achievement and the attainment of those matters.

### **The Importance of consensus**

It is so easy to dismiss the fact that the WLCU as it presently is organised as a body based upon consensus, and having a voluntary code as both unimportant or more importantly, incapable of being seriously regarded.

In my humble opinion, the ease with which a voluntary code could be dismissed and regarded as unimportant, on account of its non-legal-binding nature, is a grave mistake.

A code such as presently exists in the WLCU, albeit on a voluntary nature, has been the basis of subtle diplomacy in organisations as august as the United Nations in its attainment of achieving a consensus among governments of the world which, in turn, has found them, i.e. the covenants so agreed upon, as embodied in national legislation or professional standards.

It is my fervent hope that the consensus that exists, albeit in a voluntary format, will ultimately be promulgated in a series of geographic regions forming corporations which, in turn, will lead to the establishment of a TNC (transnational corporation) to be based, ideally, in a regime situated in the world where each constituent body, equally organised as a corporation in the geographic region, will lead to the achievement of the existence of a WLCU, that is, free from patent and latent defects, in terms of the ability of each and every member to feel and participate as if they can be a member of a viable and robust organisation.

The concept of **globalisation, regionalism and national corporate law models** has enabled, in the last 150 years, a number of dominant western models of corporate law, to become effective throughout the world. I look to the British Imperial model, the German and US models, and to the influence that these have had in Western Europe, Japan and Korea and, in some cases, as far afield as Israel.

In each State, the manifestation of the corporate models referred to has resulted in each separate region having a separate corporate law jurisdiction with its own Business Corporations Act. Equally, this can apply to the WLCU in each of its regions.

For my part, I would see there to be discernible **patterns of legal integration** which would resolve to having three basic legal techniques of integration to be used, and they would be the following:



- (i) The removal of all restrictions which discriminate on the basis of the presence of Lebanese in any geographic region, including restrictions on freedom of establishment and the manner in which those bodies can become constituent members of the regional councils. This would mean that there would be one effective regional council comprised of the constituent bodies but in no way allowing for more than one regional council to develop.
- (ii) The putting into effect of common rules and common policies.
- (iii) The approximation of a global unity, by reason of each particular geographical council having the right to participate in the ultimate transnational corporate body with reciprocity for such matters as are peculiar to the State from which the geographical council and/or region has evolved, if not originated.

In my view there now has come the need to recognise that one particular geographic region cannot control or dictate, by the mere recitation of having a proportion of votes when there is no logic nor, more importantly, is it democratic to the existence of the WLCU and, more importantly, its impact upon its affiliation as a DPI member of the UN and its NGO status.

Again, abuse of proxies and the need, if not the unbridled arrogance that confronts many who are tempted in attainment of seeking or securing the world presidency for their particular region, to lobby and enlist other regions to flout flagrantly the laws that govern, or the obligations that combine to commit each and every member to participate in the WLCU does not honour the spirit of those founding fathers who formed the organisation as long ago as 1947.

It would be, and I so recommend, that an Advisory Group adopt the following agenda, with a view to putting the WLCU on a corporate map, which is long overdue, by the adoption of the following:

1. A definition of the mission of the WLCU and transparency about its objectives and the attainment thereof.
2. To have adaptable corporate governance arrangements.
3. The protection of the members and their rights.
4. The facilitation of active financial measures to ensure that the financial viability of the WLCU remains, and continues to grow, with a view to having, at its apex, a body that can look to financial resources in order to make decisions and to lead the WLCU and, more importantly, its membership.
5. The recognition of societal interests.

In the OECD it formulated a Report as long ago as 1998 in Paris, titled: "Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets" which, whilst at first glance may not be relatively appropriate to what we are considering today, nevertheless is useful because it was a document that sought to:

- formulate a public policy, setting out minimum standards of corporate governance;
- formulate a code of voluntary "best practice"; and
- encourage common principles of disclosure.

The WLCU as a TNC would, in my respectful submission, have available, in principle, five broad headings for the role of corporate governance, which it sadly lacks and through no fault of its own is in great need of having implemented. The five broad areas are as follows:

- (a) The rights of the members.
- (b) The equitable treatment of members.

- (c) The role of those members, akin to, if not on a par with the position of shareholders in a company.
- (d) Disclosure and transparency.
- (e) The role of the World Board.

What is lacking in the matter under consideration and for which I, for my part, have grave concerns is that there is at present no corporate consensus or concern for governance, and that the Constitution, sadly, is in need of being overhauled, to bring about a collective code of conduct, irrespective of where members are located, geographically, to ensure that there is no doubt, in the future, where members stand and how they are to be organised.

If I may conclude by urging you to acknowledge that currently the will of the people is contained within the Basic Constitutional Law and that its failure to be observed will lead, ultimately, to an anarchical situation that will prevail within the WLCU that will seek, if not result in, its implosion. Such a fate should never be countenanced, let alone even fleetingly considered.

Just as we have seen in the Global Financial Crisis, the fact that social democracy is beginning to decay from within, and the process is accelerating, as evidenced by the debt crisis, it is a fundamental fact of life that certain parts of the world have contrived with law for decades that the promise of “social security” held out by many erstwhile individuals was, and always will be an illusion as it is mortgaging the future to pay for the present.

Equally, with the WLCU, if there is allowed to proceed, and to prevail, what I consider to be an unprecedented reality, namely a systematic deconstruction of the WLCU on a mass scale through deliberate and self-induced myopic overtures in the interests of securing ultimately executive power, then the WLCU will endure a political malaise that will lead to its ultimate destruction.

In concluding, might I ask you, if not exhort you, to allow common sense to prevail for the will of all the members throughout the Diaspora, to ensure that just as Lebanon has survived the philosophical dilemmas and the civil war events in recent time to emerge Phoenix-like, equally the WLCU should be vigilant not to be subjugated to the will and the vanity of those few who seek to bring upon it a need to concentrate on infighting, as opposed to developing and broadening the aims and the aspirations of our youth, in whom this organisation's future squarely lies.

I thank you for the opportunity to address you and encourage you, as I must, to be vigilant to what is required, namely the need to revitalise this organisation and not to enliven the infighting and the animosity that we are currently being beleaguered by and to no avail.

**STEPHEN JOSEPH STANTON**

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