

UNITED NATIONS
Vienna International Centre

“Prospects for the Rule of Law among Nations”

Lecture
by
Mr. Hans Corell
Under-Secretary-General for Legal Affairs
The Legal Counsel of the United Nations

Vienna
24 February 2004

"And why beholdest thou the mote that is in thy brother's eye, but considerst not the beam that is in thine own eye?"

Holy Bible, Matthew 7:3

"Not the faults of others, nor what others have done or left undone, but one's own deeds, done and left undone, should one consider."

50th Stanza from the Dhammapada (The Path of Wisdom)

"Believers, let not a group of you mock another. Perhaps they are better than you. - - - Let not one of you find faults in another nor let anyone of you defame another."

Holy Quran, Chapter 49:11 (Al-Hujarat)

"You see in others what you actually see in yourself."

The Guru Dronacharya in Mahabharata

"I went in search of a bad person; I found none as I, seeing myself, found me the worst."

Kabir, Saint Poet of North India

I wonder whether there is any one in this generation who accepts reproof, for if one says to him: Remove the mote from between your eyes, he would answer: Remove the beam from between your eyes!

Talmud: Baraita: Rashi (1050-1115 AD) quoting Rabbi Tarfon

It is easy to see the faults of others, but not so easy to see one's own faults.

Gautama Buddha (563 - 483 BC)

The first half of the night, think of your own faults, the second half, the faults of others when you are asleep.

Chinese proverb

* * * * *

Distinguished Members of the Diplomatic Corps,

Representatives of the media and the non-governmental organizations,

Friends and colleagues from the United Nations Secretariat,

Allow me first to thank my friend Antonio Costa, Director-General of the United Nations Office at Vienna for the invitation to give this Lunchtime Lecture on the eve of my departure after 10 years as Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations. On 6 March, I will leave the UN Headquarters in New York, where I am based, and return to my native Sweden.

My years at the United Nations at the crossroads between law and politics have been fascinating. Since today's lecture will be my last public address in my present capacity, it is in a sense a summing up of my thoughts for the future, based on my impressions during my time with the Organization.

The title – *“Prospects for the Rule of Law among Nations”* – is my own choosing. As always, the views expressed are my own and do not necessarily reflect the opinion of the United Nations. I should also stress that it is not my intention to address the present conflicts that the Organization is dealing with unless they have a direct bearing on the long-term perspective that I will attempt to give in this short lecture.

Let me first say a few words about international trade law, since one of the six units of the United Nations Office of Legal Affairs is located here in Vienna. The main task of this unit is to serve the United Nations Commission on International Trade Law (UNCITRAL), which was established in 1966.¹ UNCITRAL is the principal vehicle through which the Organization strives to increase trade opportunities worldwide by reducing legal obstacles to international trade. Today, I am particularly pleased to note that the General Assembly accepted the Secretary-General's proposal to allocate additional resources to the secretariat of UNCITRAL as of 1 January 2004.

It is important to understand that trade law is not an area where only specialists have an interest. On the contrary, international trade law should today be viewed in the context of international peace and security. All States must be able to participate in an equal manner in world commerce. It is therefore very important that all countries can rely on modern legal standards.

Many enterprises from developing countries are not able to trade internationally to the extent their industrial capacity would allow. One often neglected, yet important reason for that regrettable situation is inadequate commercial laws that hamper the use of modern contract practices, raise the

costs of transactions and increase commercial risks. States must therefore enact adequate and internationally harmonized laws that suit the needs of international businesses. Without such laws, even in legal environments that are functioning reasonably well, enterprises are hampered or at least not helped in negotiating international business transactions. The missed opportunities are huge, though not necessarily easily quantifiable in day-to-day business practice.

Against this background, it appears that more should be done to promote modernization and harmonization of commercial laws. UNCITRAL has formulated various types of legal standards, all designed to foster the use of modern contract practices, increase contract discipline, reduce transactional costs and manage business risks. They cover a number of areas, such as commercial dispute resolution by arbitration and conciliation, the law of international sales, electronic commerce, privately financed infrastructure projects, insolvency law, international payments, security interests, and transport law.

This indispensable work has an impact beyond the technicalities of upgrading national legal systems. Commercial law reform has a clear impact on the ability of enterprising persons in all States to participate in international trade. This trade plays an important role in increasing the well-being of their societies and is an important factor in achieving sustainable development and social stability.

As I said, international trade law should today be viewed in the context of international peace and security. In particular, the adoption of international commercial laws may play an important role in the long term perspective in post conflict situations as part of the reconstruction process.

From an international trade law viewpoint, the prospects for the rule of law among nations seem to be favourable.

Let us now broaden our perspective. And let us approach the topic in a philosophical rather than in a strictly legal manner.

I have often spoken in the past about the meaning of the rule of law among nations.² The concept comes from the domestic (national) level, where its essential elements are the obligation for State organs to exercise their competence within the limits set up by the law, the existence of legal (judicial) control over the executive power and a possibility to challenge acts of the State authority by legal means.

It must therefore be understood that a simple analogy between the concept of "rule of law" in internal and international law cannot be made. On the other hand, the meaning of "rule of law" among nations cannot be reduced to a question of simple effectiveness of such law. The question then is: Which

elements make the difference between the notions of “effectiveness of international law” and “the rule of law among nations”?

I would answer that question with a reference to the standards that are set by international legal norms. The basic norms are laid down in the Charter of the United Nations. Prohibition of threat or use of force and protection of basic human rights are among the most fundamental rules in this context. They have both acquired character of *ius cogens* (peremptory rules; norms from which no derogation is permitted) and constitute the backbone of today’s international legal order.

But there are also other important instruments that have to be taken into consideration here. I think, in particular, of international instruments for the protection of human rights and international humanitarian law.

Furthermore, the only law governing international relations is the international law. However, as discussed during the United Nations Decade of International Law (1989-1999),³ the concept of “rule of law among the nations” may have a richer association; it may include also harmonious interaction of internal and international law, in which international law has supremacy.

Of utmost importance is that this international law is respected and that States in general accept that they are bound by these norms. The notions of good faith and *pacta sunt servanda* (agreements must be honoured) are important elements here.

Another important element is that there is a possibility for every State to have an effective recourse against the violation of its rights, including with the use of international institutions. This applies both in terms of prevention or reparation if the preventive measures fail. Such international mechanisms include judicial and other instances. One of the most important is – or should be – the Security Council.

This brings me to the question of the ability of the international community, in particular the United Nations, to deal effectively with violations of international law, in particular violations endangering vital interests of the international community as a whole.

What is needed are effective guarantees for human rights both at the national and the international level, including mechanisms for identifying, at an early stage, risks of massive violations of human rights. The focus should of course be on prevention of such violations. But it is equally important that prompt humanitarian action can be taken in case actual crises emerge.

The core body of today’s international law was progressively developed and codified under the auspices of the United Nations. The United Nations was

and remains in the centre of this process, not so much because of Article 13 of its Charter that addresses this issue, but due to the authority that the World Organization enjoys as a universal and democratic institution.

The normative process within the United Nations progressed hand in hand with the Organization's efforts aimed at decolonization, advancing of economic and social progress, strengthening of international peace and security, protection of global environment etc. Furthermore, the United Nations law making efforts resonated on regional levels and inspired normative efforts that have sometimes gone beyond what was possible to achieve at the universal level.

The codification of this enormous body of substantive law, however, has not been accompanied by the establishment of adequate institutional mechanisms aimed at ensuring compliance by States with their international obligations. While the elaboration of new norms of international law continues and will continue, the focus is shifting towards the building of mechanisms aimed at enhancing the effectiveness of existing international law. The United Nations must remain in the centre of this new effort.

In parallel with this "legal" task there must be a concerted political effort towards full use of existing and newly created mechanisms. Also the universal adherence to these mechanisms will be critical for the success of this endeavour.

In this context, I simply cannot miss the opportunity to mention the International Criminal Court. In the long-term perspective, the establishment of this Court will be seen as one of the most significant advances of international law in the 20th century. It is therefore my sincere hope that also those States that obviously need more time for reflection will eventually join the States parties – presently 92 – to the Rome Statute of the International Criminal Court.

Also in the broader perspective, I would take a positive view of the prospects for the rule of law among nations. Over the years an enormous body of international law has been developed under the auspices of the United Nations and other bodies. There is hardly any activity in the daily life of people in the world today that is not in some way or other governed by rules agreed among States. In many areas this is so commonplace that people do not even reflect over the fact that the activity is regulated by international law: communications, agriculture, the law of the sea, environment, medicine, to mention but a few.

In these fields there is also a great preparedness by States to abide by their international commitments. A corresponding strengthening of international judicial structures should also be mentioned. The willingness of States to resort to the International Court of Justice is greater now than ever.

At the same time, there are many conflicts that cause enormous suffering for so many people in the world. And, as always, it is the most vulnerable that

suffer the most. The threat that terrorism poses against our societies should also be mentioned. It is regrettable that States are unable to agree on a common definition of terrorism. One of the reasons, obvious to all who are engaged in the work on the comprehensive convention against terrorism, is the ongoing conflict in the Middle East.

These are all phenomena, the kind of which mankind has suffered for as long as we can remember. The United Nations was founded to make a difference here. And I can think of no organization that is better placed to make this difference. One of the Purposes of the United Nations is to save succeeding generations from the scourge of war. The lofty words in the Preamble of the Charter must not be allowed to ring hollow. They certainly had a very deep meaning to those who created the Organization.

An important element to achieve this Purpose is the creation of international law that is also respected. In particular, fundamental human rights come into the picture here. Much remains to be done in this area if we are to succeed in our endeavours to create a better world – a world in which people can live with dignity.

There is a tendency among some States to criticize others for not respecting international rules on human rights. Unfortunately, this criticism is often all too well founded. But in order for a State to criticize others with legitimacy, that State must pay attention to its own observance of human rights.

A quotation from St. Matthew (see page 2) often comes to my mind. Surely something similar must be found in other religious or philosophical sources! I asked colleagues in the Office of Legal Affairs of different creeds to assist me. They gave me the following quotations (see page 2).

Learned theologians and philosophers would probably have views here. But to me it is important that the quotations were contributed by my own staff. Furthermore, this proves again the point that the Secretary-General often makes that there are very similar thoughts in the religious and philosophical sources that guide people all over the world.

Freedom of religion is a fundamental human right. This freedom entails not only the right to freely manifest one's own religion but also the obligation to respect others when they manifest theirs.

The values upon which international law is based are often similar to the values expressed in different religious sources. But it is important that we do not mix religion and the secular here. International law should be acceptable to all people, and this is precisely why the United Nations as one of its first measures adopted the Universal Declaration of Human Rights.⁴

The impressive body of international law that we now have developed together is a common heritage that can be handed down to coming generations. In particular, the contribution to the body of international law over of the past 10 years has been remarkable. Landmark events, to mention but a few, include the entry into force of the United Nations Convention on the Law of the Sea in 1994 and the establishment of its three institutions, including the International Tribunal for the Law of the Sea; the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda in 1993-1994; the negotiation of the Rome Statute of the International Criminal Court in 1998, and its entry into force in 2002; the strides taken in the field of international commercial law, including e-commerce; and the increased focus on treaty law, enhanced by the Treaty Events that have now become an institution within the United Nations.

But is this law respected by all? We know that there is room for major improvement here! Sometimes international law is violated because of lack of resources. But all too often violations are intentional and committed with contempt.

However, today there is also a threat to our common endeavor of a different kind: the attempts by some to belittle our efforts at the international level. There are those who even maintain that international law does not exist (unless it suits their interest to invoke it in a particular situation). It has been suggested that international law is a threat to democracy and the hopes of democratic politics all over the world.⁵

Some say that opinions of this kind should not be taken seriously. But I am concerned that if they are not emphatically rebutted, they risk damaging all that the United Nations stands for. To suggest that international law does not exist or, if it does, that it is a threat to democracy is an insult to all the many, past and present, who have contributed to the development of a rule-based international society. I am thinking here not only of representatives of States, but also of the many others who participate in this work, including from non-governmental organizations, the business community and civil society. Such statements fly in the face of the many small States, who view international law as their first line of defence.

Under all circumstances, the Legal Counsel of the United Nations must always speak up in defence of international law as indispensable for achieving the peace and security that the founders of the Organization were aiming for when they created the system of collective security laid down in its Charter.

One of its founders, President Franklin D. Roosevelt, stated before the US Congress on 1 March 1945 upon his return from the Yalta Conference:

“The structure of world peace cannot be the work of one man, or one party, or one nation ... It must be a peace which rests on the cooperative effort of the whole world.”⁶

Less known, perhaps, is what his successor said four days after Franklin D. Roosevelt had died. In his State of the Union address before Congress on 16 April 1945, President Harry S. Truman said:

“Nothing is more essential to the future peace of the world than continued cooperation of the nations which had to muster the force necessary to defeat the conspiracy of the Axis powers to dominate the world.

While these great states have a special responsibility to enforce the peace, their responsibility is based upon the obligations resting upon all states, large and small, not to use force in international relations except in the defense of law. The responsibility of the great states is to serve and not to dominate the world.”⁷

I have chosen these quotes, because they come from statesmen directly involved in the creation of the United Nations. But similar thoughts were expressed by others too. As the Secretary-General observed recently, Truman's Republican successor, President Dwight D. Eisenhower, was equally committed to the United Nations.⁸ In his Second Inaugural Address on 21 January 1957, the President and former general said:

“Yet this peace we seek cannot be born of fear alone: it must be rooted in the lives of nations. There must be justice, sensed and shared by all peoples, for, without justice the world can know only a tense and unstable truce. There must be law, steadily invoked and respected by all nations, for without law, the world promises only such meager justice as the pity of the strong upon the weak. But the law of which we speak, comprehending the values of freedom, affirms the equality of all nations, great and small.

- - - - -

We recognize and accept our own deep involvement in the destiny of men everywhere. We are accordingly pledged to honor, and to strive to fortify, the authority of the United Nations. For in that body rests the best hope of our age for the assertion of that law by which all nations may live in dignity.”⁹

It is noteworthy that the decision of the United States Senate to ratify the United Nations Charter – by a majority of 89 to 2 – was very much a bipartisan decision, taken with the enthusiastic support of Republican statesmen such as Arthur Vandenberg and John Foster Dulles.¹⁰

But now someone objects: why focus only on one particular Member State in this context? The answer is simple: because of the geopolitical situation. In another era, the focus would have had to be on the Persians, or the Greeks, or the Romans, or the British. In reality, therefore, the focus is on a dilemma with which we will always have to wrestle.

What it comes down to is that the possibilities of creating checks and balances where power is exercised are limited. At the national level, there are well established models. But at the international level the reality is that a powerful and sovereign State at a certain point may plainly chose to act “in its own interest”. It is in this situation we need the knowledge, experience, vision and statesmanship that was demonstrated when the United Nations was created.

With the founding of the United Nations, the course for the rule of law among nations was set. And if we stay this course, the prospects are favorable. And surely, the world is a better place today than some sixty years ago. The United Nations and the advancement of the international rule of law have contributed to this.

Within the Organization we are trying to learn lessons from mistakes committed in the past. Some of these mistakes are attributable to the Secretariat and those who work for the Organization. Others are the responsibility of its Member States. The main thing is that we join hands. Of particular importance is that States that are in a position to support the Organization do so efficiently and effectively.

Translated into international law terms, the quotes from the different religious and philosophical sources (page 2) mean that we should first look to how we respect international law in our own States and correct what is not up to standards there. (This does not mean that States should refrain from taking action collectively within the framework of the various implementation mechanisms that have been established.) If all States look to their own performance in the first place, then the threats against peace and security would be drastically reduced. The threats will never be eliminated, but there would be more States to join hands in dealing with the problems that occur.

But above all, we would have more time to deal with environmental degradation and other threats against our very existence on the globe. And we would have better opportunities to realize the Millennium Development Goals.¹¹

The rule of law in itself is not sufficient to deal effectively with all the challenges we are facing. There are millions of people in the world today who suffer from hunger, poverty, disease and other difficulties. Lofty words about rule of law give little comfort to someone who is struggling to survive the day.

What do we have in common then, irrespective of the circumstances in which we live? The answer should be simple: the yearning for freedom!

This hunger for freedom can be expressed in many ways. President Franklin D. Roosevelt's 1941 State of the Union address is a famous example. In his speech, Roosevelt promoted the concept of four basic freedoms to which people everywhere in the world are entitled: *freedom of speech and expression, freedom of every person to worship, freedom from want, and freedom from fear*.¹²

Irrespective of how we express our thoughts here, we must not forget that freedom also entails a responsibility: Those who enjoy freedom must do this in a way that they do not infringe upon the freedoms of others.

Let me close by quoting one of my countrymen, Bishop Tomas.¹³ His *Song on Freedom*, written more than 560 years ago, opens:

“Frihet är det bästa ting
Som sökas kan all världen kring,
Den frihet kan väl bära.”

It is difficult to translate the terse and powerful language. An attempt:

“Freedom is the best of things
That can be sought all around the world,
For those who can well bear it.”

Later, on another continent in a great nation, a statue was raised to symbolize freedom – “Liberty”. We are confident that the Goddess's torch is raised in defence not only of “Liberty” but also of: “حرية”, “自由”; “Liberté”; “свобода”; and “Libertad”!¹⁴

Thank you for your attention!

¹ UNCITRAL was established by the General Assembly in 1966 (Resolution 2205(XXI) of 17 December 1966). See also <http://www.uncitral.org/>

² See <http://www.un.org/law/counsel/info.htm>

³ By its resolution 44/23 of 17 November 1989, the General Assembly declared the period 1990-1999 to be the United Nations Decade of International Law. The main purposes of the Decade were, *inter alia*: (a) To promote acceptance of and respect for the principles of international law; (b) To promote means and methods for the peaceful settlement of disputes between States, including resort to and full respect for the International Court of Justice; (c) To encourage the progressive development of international law and its codification; (d) To encourage the teaching, study, dissemination and wider appreciation of international law. – By its resolution 54/28 of 17 November 1999, the General Assembly decided that it would continue considering developments in the progress made in the implementation of the purposes of the Decade beyond its conclusion. See also <http://www.un.org/law/1990-1999/>

⁴ Adopted by General Assembly resolution 217 A (III) of 10 December 1948. See also <http://www.unhchr.ch/udhr/>

⁵ See e.g. references in American Society of International Law, Newsletter November-December 2003.

⁶ See e.g. *The Franklin Delano Roosevelt Memorial*, Chronicle Books, San Francisco (1997), p. 123. See also <http://www.parksandhistory.org>

⁷ See Stephen C. Schlesinger, *Act of Creation – The Founding of the United Nations*. Westview Press 2003, p. 15. See also <http://www.trumanlibrary.org/ww2/stofunio.htm>

⁸ Secretary-General Kofi Annan's address to the Los Angeles World Affairs Council on 2 December 2003 at <http://www.un.org/News/Press/docs/2003/sgsm9044.doc.htm>

⁹ See e.g. <http://www.yale.edu/lawweb/avalon/presiden/inaug/eisen2.htm>

¹⁰ See Secretary-General Kofi Annan's Heinz Foundation Distinguished Lecture at the University of Pittsburgh on 21 October 2003 at <http://www.un.org/News/Press/docs/2003/sgsm8955Rev1.doc.htm>

¹¹ See <http://www.un.org/millenniumgoals/>

¹² See e.g. <http://www.janda.org/politxts/State%20of%20Union%20Addresses/1934-1945%20Roosevelt/FDR41.html>

¹³ Around AD 1380-1443.

¹⁴ Freedom expressed in the six official languages of the United Nations: Arabic (“Hurriah”), Chinese (“Tsrr yo”), English, French, Russian (“Svabōda”) and Spanish.