

Chartered Institute of Arbitrators

President's Lunch

"The UN's Legal Approach to Dispute Resolution"

**Statement by Ms. Patricia O'Brien,
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Mr. President,
Members of the Institute,
Ladies and Gentlemen,

[Introduction]

I am delighted to address you today on the issue of the UN's legal approach to dispute resolution. Thank you very much for spending your lunch hour with me.

Allow me, at the outset, to express gratitude to my good friend Jeff Elkinson, the President of the Institute, for inviting me.

It is a great honour to address the champions of dispute resolution. Your profession is to resolve disputes - mostly commercial disputes, through arbitration.

At the UN, dispute resolution naturally goes beyond commercial differences, although we have these too.. However, what unites commercial arbitrators and UN lawyers is the quest for finding solutions to resolve disputes in a peaceful manner, through using legal skills and applying available tools toward the same objective. And this work is firmly founded on the principle of the rule of law. This is what we build on. This is what we are called upon to protect.

[The work of UNCITRAL in the field of commercial arbitration]

Let me first say a few words about the contribution the UN makes to commercial arbitration. In this connection I mention the work of the United Nations Commission on International Trade Law, UNCITRAL. As you might be aware, UNCITRAL is serviced by the Division of International Trade Law which is an integral part of my Office, the Office of Legal Affairs.

UNCITRAL plays a key role in the promotion of the rule of law by providing internationally acceptable rules in the field of commercial and trade law, and supporting the enactment of those rules. Its work on the harmonization and modernization of commercial law benefits parties engaged in business transactions and increases the confidence of aid donors. It promotes good governance and creates the necessary conditions for investment and thus for economic growth. This work is every bit as essential to the fight against poverty, the promotion of sustainable development and economic growth, and the achievement of peace and collective security, as those of its better-known counterparts in the fields of criminal justice, security, constitution-making or transitional justice.

Think for a moment about the root causes of many domestic conflicts: extreme poverty, lack of access to basic services (such as water), unemployment, corrupt practices, absence of transparency and accountability. Or consider post-conflict societies, where a focus on police, justice and electoral reform may help in consolidating peace in the short run, but where more is needed to provide the capacity to revive the basics of economic life. Without a viable economy, such societies risk sliding back into conflict or chaos.

UNCITRAL's work focuses on ensuring recognition and enforcement of property rights and binding commitments, which is the basis for any commercial activity. Its standards aim at creating legal certainty, and decreasing levels of risk and transaction costs, in order to build confidence in doing business both domestically and cross-border. This in turn stimulates commerce and the flow of investment into an economy.

Some examples can help to illustrate this: enacting public procurement legislation based on the UNCITRAL model helps countries set up procurement systems that give greater confidence to international donors. Indeed the World Bank and others use these UNCITRAL standards as a benchmark for law reform in countries where they operate. Also, private-sector mediation and arbitration – in commercial and other contexts – again based on UNCITRAL models, can offer a more reliable and efficient alternative to slow, costly and sometimes opaque judicial apparatus that can exist in some jurisdictions.

[The work of the UN in the broader context of dispute resolution]

But let me now turn to the work of the United Nations, and in particular the work of my Office, in the broader context of dispute resolution.

The peaceful resolution of disputes is the most important Purpose of the United Nations, enshrined in Article 1, of the UN Charter.

Over the years, the UN has seen periods of great advancement in international law and jurisprudence, just as there have been times when our function as guardian of the global legal architecture has seemed more peripheral. Since joining the Organisation, it has become clear to me that resolving international disputes through justice and international law is central to the work of the UN and to the Secretary-General and his team.

So - what is the vision of my office against this background? One answer is the focus on promoting respect for the rule of law by the UN itself as an actor.

As the Legal Counsel, my task is to support the Secretary-General's commitment to the strengthening of the rule of law, the pursuit of justice and the determination to end impunity for war crimes, crimes against humanity, genocide and other serious violations of international human rights law. This topic, in one way or another, permeates my activities on a daily basis.

My office plays a key role in promoting the rule of law at the national and international levels, and this is at the heart of the UN's mission. Establishing respect for the rule of law is fundamental and essential for a number of reasons, including firstly: prevention of conflict; secondly, achievement of a durable peace in the aftermath of conflict; thirdly, the effective protection of human rights; and also, of course, sustainable economic progress and development.

It is my mission to help the UN to act in accordance with the rule of law. My Office plays a role – to help with the concrete and practical application and implementation of the rule of law. It is my Office's job to ensure that UN departments and offices develop and implement policies in accordance with the law. And it is precisely within these parameters that the United Nations approaches the peaceful resolution of international disputes.

Let me give you some examples.

[International criminal justice and the fight against impunity]

Under the leadership of the Secretary-General, the UN has achieved significant progress in the fight against impunity. BAN Ki-moon has consistently called for the enhancement of accountability for those who commit international crimes, including for serious violations of human rights and international humanitarian law.

In this respect, I would like to refer to the work of some of the various international justice mechanisms, which we assist and support. The 1990s and the early 2000s were historic periods in international criminal justice. New international criminal tribunals were established to ensure accountability for genocide, war crimes and crimes against humanity.

These Tribunals have reaffirmed, and continue to reaffirm, the central principle established long ago in Nuremberg: that those who commit, or authorize the commission of, war crimes and other serious violations of international humanitarian law are individually accountable for their crimes and will be brought to justice, in accordance with the due process of law.

My Office has been closely involved in the establishment and operation of the international criminal tribunals. While, they have only been able to prosecute a relatively small number of defendants, I believe that, in doing so, they have already achieved a great deal. A number of those who, from high positions, allegedly planned and directed the most serious crimes have been brought to justice or are currently facing trial. Heads of State have not been exempted. By any standard this is progress over what went before. We have moved forward from a culture of impunity which had reigned, and which offered no justice to victims and no deterrence to those willing to commit the gravest crimes.

And through our support for our five UN-established or UN-backed international criminal tribunals – relating to Rwanda, the former Yugoslavia, Sierra Leone, Cambodia and Lebanon – we significantly contribute to the fight against impunity, which is an essential tool in laying the foundation of a durable peace in the aftermath of an armed conflict or a terrorist attack.

[ICC]

In this context, I wish to draw particular attention to the Rome Statute - which gave rise to the International Criminal Court. The ICC is at the centre of our system of international criminal justice.

The Court's 10th anniversary in July of this year is a symbolic milestone that is being marked throughout the year by those involved in the fight against impunity for serious crimes of international concern. This provides an opportunity to review the achievements made in the field of international criminal justice in the past 10 years. The Court and its supporters hope that this opportunity will also act as a reminder of the urgency for all States committed to justice to ensure continued support for the Court.

I know there has been some criticism of how long it took for the Court to complete its first trial – more than five years. However, that would be to overlook the issues that any new jurisdiction faces, where legal paths are as yet un-trod and there are not yet precedents to guide.

It is to be expected that, as questions of first impression are answered and precedents established, the work of the Court will accelerate — all, of course, while guaranteeing due process of law to those brought before it.

Currently, the ICC is exercising jurisdiction in respect of eight situations: Democratic Republic of Congo, Central African Republic, Northern Uganda, Darfur, Libya, Kenya, Côte d'Ivoire and Mali.

As the centrepiece of the system of international criminal justice, the ICC is at the heart of efforts of the international community to ensure accountability and end impunity while also seeking to strengthen the rule of law. If we want to be serious about combating impunity and nurturing and developing a culture of accountability, we must support its work. This Court provides the opportunity and the vehicle for our generation significantly to advance the cause of justice and, in so doing, to reduce and prevent human suffering of the worst kind.

The work of the United Nations in this area and in the next subject I will address is never easy and rarely takes us in a predictable, straight-line direction. In this context it is always worth recalling the view of the second UN Secretary-General Dag Hammarskjöld when he said that "the UN was not created to take mankind to heaven, but to save humanity from hell."

[R2P]

Let me now turn to the Responsibility to Protect - an interesting and relatively new political and legal concept which has been the subject of much discussion at the UN in recent times - and its implementation.

Responsibility to Protect – or R2P as it is also known - gives expression to what has become a global-wide conviction that it is immoral and unacceptable for States to commit or to allow serious international crimes to be committed against their populations, and that the international community has a responsibility to prevent these crimes and, where they are occurring, to address them.

Although R2P may not be an obligatory new rule and may not impose binding new duties, it nevertheless does confer additional responsibility and that additional responsibility includes taking action.

To date the concept of the Responsibility to Protect has been invoked in ten situations by United Nations inter-governmental organs:

The Human Rights Council referred to R2P twice in the situation in Libya and twice in the situation in Syria – each time ahead of the Security Council. The Security Council has twice referred to R2P in connection with the situation in Libya in February and March 2011. The Security Council further referred to R2P in connection with the situations in South Sudan in July 2011 and in Yemen in October 2011. R2P-like language can also be found in the Security Council's resolutions on Côte d'Ivoire in March 2011, Somalia in September 2011, and Children in Armed Conflict in July 2011.

Before that, namely in Kenya, Kyrgyzstan, Guinea, the Democratic Republic of the Congo, and elsewhere, R2P had already become part of the UN approach and preventive diplomacy.

To address crises such as I have mentioned, the concept of the Responsibility to Protect is a powerful new tool. We must not forget how remarkably far we have come in so short time. The world has embraced the Responsibility to Protect - not because it is easy, but because it is right.

2011 was the year in which the Responsibility to Protect came of age and passed a tough reality test.

The results were not always even. But, it is widely believed that, ultimately, by implementing the concept of R2P in practice, tens of thousands of lives were saved: in Guinea, Côte d'Ivoire, in Yemen and in Libya. Action was taken in support of the solemn promise that was given over the graves of Srebrenica and Rwanda not to stand by idly in the face of the commission or threat of the commission of genocide, ethnic cleansing, war crimes and crimes against humanity. We demonstrated that protection of fellow human

beings from atrocity crimes is a defining purpose of the United Nations in the twenty-first century.

It was the right thing to do in 2011. It remains the right thing to do in 2012. We must not relent.

The challenge for the international community is to find ways to prevent further atrocities and escalation of conflicts. R2P's contribution is to underscore the responsibilities of States *vis-à-vis* their populations, and to pressure and mobilize the international community to help States meet those obligations - including the taking of collective action where States fail to do so.

Some governments have blatantly disregarded their responsibilities to date. But the international community must not. It can and must continue to be mobilized. And, while much remains to be done and serious challenges will be posed, the doctrine of R2P is very much engaged.

R2P may not be an obligatory new norm and may not impose binding new duties. Nevertheless it does confer additional responsibility and that additional responsibility includes taking action.

One thing is clear. There can be no compromise on fundamental principles of justice, human rights and human security. We must have agreed values that define our response. Above all, we must focus squarely on people and their needs.

[Conclusion]

Let me perhaps stop here and give you the opportunity to comment on the small glimpse of the UN's legal approach to dispute resolution that the time constraints allowed me to provide you with. Thank you very much for your kind attention. I look forward to your questions or comments.

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