



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

New York Law School

“Building an international rule of law”

Annual Otto L. Walter Lecture

by

Mr. Miguel de Serpa Soares,
Under-Secretary-General for Legal Affairs
The United Nations Legal Counsel

New York, 18 February 2016

Associate Dean Mr. William LaPina,
President of the Otto Walter Foundation,
Mr. Frank Helman,
Director of the Center for International Law,
Professor Lloyd Bonfield
Distinguished Members of the Board of Trustees,
Distinguished Members of the Faculty,
Students,
Ladies and Gentlemen,

I am very grateful for the invitation to address you with the annual lecture in honour of the distinguished lawyer Otto L. Walter, a famous graduate of this law school, who was at the forefront of the development of international law.

Introductory Remarks

As you might remember, in 2011 the Secretary-General of the United Nations also presented this annual lecture. He dedicated it to the efforts of the United Nations in the rule of law field. As the Secretary-General noted in this lecture, “the United Nations stands with all those seeking to build societies where nobody is above the law and where laws are publicly promulgated, equally enforced and consistent with human rights”.

Today I would like to build on the ideas expressed by Mr. Ban Ki-moon in this auditorium five years ago and to talk about the work of shaping an international rule of law, from the perspective of the universal international organization and its legal service, and the new challenges and developments in this field. As the Legal Counsel of the United Nations, I head the Office of Legal Affairs of the United Nations Secretariat. Naturally, the rule of law lies at the core of the mandated activities of my Office.

What is the “Rule of Law” from the United Nations perspective?

Before going into the substantive details of the rich experience of my Office in the rule of law sphere, I would like to briefly discuss with you the basic idea of the rule of law. As lawyers, we tend to start our analysis of any subject with a definition. Today, it seems that everybody uses this expression – the “rule of law”. It has become a part of the vocabulary of world politics and international affairs. It is employed by national governments and non-governmental organisations. It is used randomly to describe better societies, built on the principles of equity and accountability.

In the international field, it has proved difficult for Member States of the United Nations to work out a commonly agreed definition. There are many components to the rule of law, which are specific to different regions, legal systems, historical backgrounds, and ethnic and cultural traditions.

In 2004, the Secretary-General in his report to the Security Council titled “The rule of law and transitional justice in conflict and post-conflict societies” suggested a unified approach to the components of the rule of law, describing it as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”.

This approach captures the essence of the rule of law.

As we all can agree, International Law, including the Charter, is at the very foundation of the UN Organisation. The three pillars enshrined in the UN Charter are peace and security, development and human rights. Promoting knowledge of, adherence to, and respect for, international law

is central to the work of the Organisation across these three pillars. Thus, the concept of the rule of law is embedded in the mission and the mandate of the United Nations.

In a recent decade, with the rise of new challenges to international peace and security, the rule of law features high on the agenda of the United Nations.

Rule of law is perceived as a stabilizing mechanism in a world in which an increasingly complex set of realities prevails: be it the scourge of war and its adverse impact on humanity – in particular, women, the young and the vulnerable; terrorism and growing extremism; climate change and natural disasters; global health threats; economic uncertainty in a globalised world and rising joblessness; growing inequality between the rich and poor; gender violence and abuse exacerbated by gender inequalities across the globe.

Rapid development in the institutional framework of the rule of law commenced in 2005, when the Member States of the United Nations gathered at the milestone 2005 World Summit. In its outcome document, the Heads of State and Government affirmed that human rights, the rule of law and democracy “are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations”, and they reaffirmed their “commitment to the purposes and principles of the Charter and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States”.

Many important events followed, including the 2012 High-Level Meeting on the Rule of Law, held by the General Assembly at its 67th Session. As a result, Member States adopted a Declaration, in which they reaffirmed their commitment to the rule of law and recognized that “the rule of law applies to all States equally, and to international organizations, including the United Nations and its principal organs, and that respect for and promotion of the rule of law and justice should guide all of their activities and accord predictability and legitimacy to their actions”.

Yet another milestone is the recently adopted Sustainable Development Agenda for 2030. It envisages a World in which, among other things, there is universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; respect for race, ethnicity and cultural diversity; and respect of equal opportunity permitting the full realization of human potential and contributing to shared prosperity.

As you can see, the rule of law permeates the United Nations agenda.

Role of the Office of Legal Affairs

Various entities of the United Nations system assist Member States' efforts to strengthen the rule of law at the international and national levels, according to their mandates.

The Office of Legal Affairs of the United Nations, which I head, is in the lead on many of these activities. While OLA's role has become diversified over the years, a focus on the rule of law has been a common thread in its activities. The major issues which my Office faces in the promotion of the rule of law are the following.

- How to ensure the better knowledge of international law, and promote education in this sphere;
- How to encourage greater accession to multilateral treaty regimes, and the implementation of international law by Member States;
- How to assist the General Assembly in its responsibility under the UN Charter to progressively develop international law;
- How best to assist States in their national implementation of international law, through technical assistance and teaching;
- How best to encourage the peaceful settlement of disputes among States, through judicial and other means;
- And last, but very importantly, how best to support the international and hybrid criminal tribunals in the prosecution of serious international crimes.

In different capacities, divisions of my Office work "upstream" in assisting Member States in developing normative instruments in the various negotiating processes to advance the rule of law, as well as "downstream" in promoting awareness and implementation of international law.

Due to time constraints, I will not be able to tell you about all the activities of my Office in these spheres. However, I will try to give you some concrete examples and tell you about some of the highlights.

International Law Training

One of the cross-cutting aspects of OLA's work involves training and awareness activities in international law. Shaping and promoting understanding of international law is crucial to strengthening international peace and security among States. The General Assembly has long recognised that better knowledge of international law is an essential element in promoting friendly relations and cooperation among States.

In this regard, the **Codification Division of OLA** is charged with implementing the **Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law**, which commemorated its fiftieth anniversary last year.

The Programme provides important international law training. In 2015, OLA organized a **Regional Course** in International Law in Addis Ababa, an International Law Seminar in Cairo, and the International Law Fellowship Programme (ILFP) in The Hague. These courses enable qualified professionals, in particular government officials and teachers of international law from developing countries and countries with emerging economies, to deepen their knowledge of international law and of the legal work of the United Nations and its associated bodies.

In 2016, OLA will organize **three Regional Courses**: one in Addis Ababa, which is currently taking place, one in Montevideo and one in Bangkok, as well as the International Law Fellowship Programme in The Hague.

Also under the Programme, OLA continuously expands the **Audiovisual Library of International Law**, a virtual training and research centre with more than 390 leading international law scholars, judges and practitioners from different countries and legal systems who contribute to its three pillars: the Lecture Series, the Historic Archives and the Research Library. Since its creation in 2008, the Audiovisual Library has been accessed by more than 1.3 million users in 193 Member States and non-Member States. OLA will continue to promote these activities in the years ahead.

Expanding the Network of International Treaties

A very important part of OLA's function to build the international rule of law is related to ensuring greater access of the Member States to **multilateral treaty regimes**. It is a central feature of the role of the rule of law that the law is public and accessible to all.

From the outset, Member States have emphasized the importance of a **robust international legal framework** as a key mechanism in supporting and promoting the rule of law. They also try keep this framework open and transparent by committing to **register and publish all future treaties** with the Secretariat of the United Nations.

Since the adoption of the Charter, Member States have consistently reiterated their commitment to supporting the multilateral treaty framework and promoting the rule of law through collective action. Indeed, this commitment was underlined at the most recent session of the General Assembly which, under its agenda item entitled 'The rule of law at the national and international levels', focused its discussions on the sub-topic of 'the role of multilateral treaty processes in promoting and advancing the rule of law'. In this context, the General Assembly, in its resolution 70/118, again recognised the central role that multilateral treaty processes play in advancing the rule of law.

The role of treaty law and practice in the promotion and maintenance of the rule of law has taken on even greater significance in the age of globalization. We now see a proliferation of treaty-making, with **the number of multilateral treaties deposited with the Secretary-General increasing to over 560**. The Secretary-General is the main depositary of multilateral treaties in the world and in discharging his depositary functions the Office of Legal Affairs now receives and processes over **900 treaty actions per year**.

With the expansion of treaty-making activity by States, the work of the Secretary-General in relation to the registration and publication of treaties under Article 102 of the Charter has also increased, with an average of over **1,200 treaties now submitted for registration each year**.

Reflecting the rapidly increasing scope and number of multilateral treaties over the last 30 years, the work of the Secretary-General has evolved to meet the needs of modern treaty practice. A key step in this process was the establishment, at the request of the General Assembly, of

a comprehensive on-line electronic database covering all depositary and registration work of the Secretary-General. Today, the **United Nations treaties website**, maintained by the Treaty Section of my Office, provides open and free access to authoritative information on the status of all Multilateral Treaties Deposited with the Secretary-General and the over 250,000 treaties and treaty actions registered with the Secretariat and published in the United Nations Treaty Series.

In recent years, the Office of Legal Affairs has also worked directly with Member States by assisting, on their request, during the negotiation and drafting of major treaties. Such assistance was provided most recently by the Office of Legal Affairs during the negotiation and conclusion of the Paris Agreement under the United Nations Framework Convention on Climate Change.

With the aim of promoting participation of all States in the multilateral treaty framework and thereby supporting the rule of law at the international level, the Secretary-General also continues to host the **annual Treaty Event**.

During the event, Heads of State and Government, as well as other dignitaries present in New York for the opening of the annual session of the General Assembly, are invited to deposit instruments of ratification, accession, acceptance or approval of multilateral treaties deposited with the Secretary-General.

These events have proven a successful catalyst for treaty participation, with **1,877 actions performed by States** in relation to treaties deposited with the Secretary-General **since the inception of the event in 2000**. In its resolution 70/118 last year, the General Assembly reaffirmed its support for the event.

In recognition of the increasingly complex modern treaty landscape, the Office of Legal Affairs has also developed a range of tools, resources and capacity-building activities aimed at **facilitating the effective engagement by all States in the multilateral treaty framework**.

In the last year, the Secretariat has continued to deliver the **biannual treaty law and practice training workshops** for all Member States at the UN Headquarters in New York, in addition to delivering training sessions and a regional workshop for Latin America held in Asuncion in collaboration with the Republic of Paraguay.

These workshops continue a long-standing tradition of training activities conducted by the Secretariat in the field of treaty law and practice.

The Secretariat has also developed a series of materials aimed at assisting all States to participate effectively in the multilateral treaty framework, including the **Treaty Handbook**, which provides a practical guide to the depositary and registration functions of the Secretary-General, the **Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties**, and a set of model instruments and technical guide materials designed to assist states in the registration of international agreements and participation in the multilateral treaties deposited with the Secretary-General.

Law of the Sea and the Rule of Law

Another important function of this Office is performed by the **Division for Ocean Affairs and the Law of the Sea (DOALOS)**. In general, it provides advice, studies, assistance and research information on the application of the 1982 United Nations Convention on the Law of the Sea (the Convention) which sets out the legal framework within which all activities in the oceans and seas must be carried out. As such, DOALOS deals with a number of law of the sea issues that are relevant to the rule of law. To this end, it collaborates with a broad range of United Nations entities to provide assistance at the global, regional and subregional levels.

A **recent development** is of particular relevance for the development of the rule of law with regard to oceans. I am referring here to the adoption of resolution 69/292 by the General Assembly. This resolution addresses the development of **an international legally binding instrument under the Convention on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction**.

The resolution provides for the establishment of a preparatory committee which will make substantive recommendations to the Assembly on the elements of a draft text of an international legally binding instrument. Future negotiations are expected to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology.

Let me also recall the important work of the **Commission on the Limits of the Continental Shelf**, which is serviced by the Division. The work of the Commission is of direct relevance for the exact identification of areas of the continental shelf beyond 200 nautical miles, where coastal States have sovereign rights over natural resources. The outer limits of the continental shelf also define the limits of the international seabed Area, the common heritage of mankind.

Providing support to Member States in the promotion of the rule of law in the oceans and seas is at the heart of the **capacity-building activities**, through DOALOS. In particular, a better understanding of the law of the sea and ocean affairs and the domestic implementation of key international commitments under the Convention, its implementing Agreements and other relevant instruments is supported by my Office through: the provision of advisory services; the organization of briefings and training programmes; the dissemination of information, including through the preparation of publications; the administration of fellowship programmes; and the administration of trust funds.

For example, a number of training courses have been delivered recently with the objective of increasing the capacity of national law-makers and administrators to develop and implement comprehensive ocean law and policy, based on specific and clearly identified needs at national/regional levels.

These included two training workshops in Mogadishu, for Parliamentarians of the Federal Republic of Somalia and for Somali federal and regional government officials respectively, aimed at enhancing their understanding of the Convention and the implementing Agreements.

In addition, with a view to providing human resource development for individuals from developing States, DOALOS manages two Fellowship Programmes: **the United Nations – The Nippon Foundation of Japan Fellowship; and the Hamilton Shirley Amerasinghe Memorial Fellowship**. These programmes target individual capacity-building needs as key elements in addressing various obstacles at national and regional levels. I would also mention a training programme on the implementation of the provisions of the Convention on marine scientific research.

Promoting Accountability

Another important OLA's function, which I would like to highlight today, is the legal advice and assistance in establishment and functioning of **international and hybrid criminal tribunals as well as other accountability mechanisms**.

In this regard, I would like to reflect on the principle of accountability in general, which is an inextricable element in the rule of law both on the international and national levels, and to touch upon some current issues of the changing accountability landscape, on which my Office is engaged on a daily basis.

Societies riven by conflict often face the vast challenge of rebuilding fractured and fragile state institutions. In this context, nurturing the rule of law in those institutions is imperative to building a stable and secure society. When serious crimes of international concern have been perpetrated, it is vital that those responsible are held accountable.

In the early 1990s the Security Council, acting under Chapter VII of the UN Charter, created the **International Criminal Tribunals for the former Yugoslavia and for Rwanda**. Since then, the response of the international community to the perpetration of atrocity crimes has been predicated on the understanding that accountability must flow.

We subsequently witnessed the creation, on the one hand, of the **International Criminal Court** – which the United Nations supports as the preferred accountability option when serious international crimes have been committed and there is no suitable recourse at the domestic level. On the other hand, several ad hoc tribunals have been established to bring about accountability in **Sierra Leone, Cambodia** and in respect of the assassination of former Prime Minister of Lebanon Rafiq Hariri.

The international and UN-assisted tribunals have secured accountability for the most serious crimes of international concern: genocide, crimes against humanity, war crimes. Those institutions have also developed substantive international criminal law, notably in the fields of gender crimes and sexual violence in armed conflict.

However, the impact of all these international tribunals goes further:

- We can first of all affirm that today there is an expectation that those who would perpetrate atrocities will be held accountable. It may take time – decades even, as in the case of the proceedings before the ECCC – but accountability will flow.
- Secondly, victims and witnesses, those who are often most vulnerable or marginalised in conflict, have been given a voice, which has been heard in proceedings against the highest echelons of military and political power. Indeed, in the past twenty years, hundreds of victims have testified in proceedings before these tribunals. The evidence which they have provided has contributed to the creation of a historical record, which will be preserved in the archives of these institutions.
- Last but not least, the age of accountability is increasingly present at the domestic level. One theme which we see emerging strongly is the concept of international assistance to national jurisdictions to facilitate the prosecution of serious crimes of international concern. Thus we are currently engaged together with Member States and regional organisations in discussions on issues of accountability in a wide range of contexts that entail some measure of collaboration between the domestic legal authorities and the international community.

This model faces challenges, particularly in post-conflict situations when a state's justice system may be shattered and lacking in capacity. However, if assistance is provided in a sustainable and committed manner, taking into account the specific needs of each particular situation, there can be a significant contribution to building the rule of law at the domestic level.

The international criminal tribunals have contributed to building the rule of law at the international level by cementing the proposition that no one is above the law – heads of State and Government, military leaders and police have all been in the dock.

This in turn has had an impact at the national level, where we have seen an increase in domestic courts exercising jurisdiction in respect of serious crimes of international concern under the complementarity principle. With the fortification of the rule of law within Member States comes the strengthening of the international legal order, which lies, of course, at the core of the UN Charter.

OLA's Collaboration with other United Nations Entities

As you can see, the mandate of the Office of Legal Affairs in the building of the rule of law is broad. Many of its mandated activities are within the exclusive domain of the Office. But of course the OLA is not the only UN division entrusted with the rule of law functions.

OLA performs its duties in close collaboration and in consultation with other entities.

For the purposes of better coordination and ensuring a coherent approach to the rule of law activities, a Rule of Law Coordination and Resource Group was established within the United Nations. It is chaired by the Deputy Secretary-General and has an overall leadership role for the rule of law. It now includes 20 entities with rule of law components in their mandates and active in the different aspects of the rule of law at the national and international levels.

Additionally, OLA has a special engagement with the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Office on Drugs and Crimes (UNODC) to strengthen the Organization's institutional response to trends and challenges in the application of the rule of law at the international level.

Examples of this cooperation include a diverse range of activities that concern the interaction between international and national law.

They encompass assisting in enhancing coordination in the field of counter-terrorism; cooperating in the area of victim and witness protection, including before the various United Nations criminal tribunals; developing tools to promote the uniform and harmonized implementation of international law, for example in the field of anti-corruption; and providing technical assistance on international law matters, such as in the field of piracy.

For instance, OLA worked closely with UNODC and OHCHR to assist the Legal Working Group and Contact Group on Piracy off the coast of Somalia to assess the applicable legal regime and to develop a toolbox of measures to combat piracy, while respecting the human rights of the accused.

Moreover, it collaborated with UNODC in the development of a Guidebook on anti-corruption in public procurement and the management of public finances.

Concluding Remarks

This brings me to the end of today's lecture. My main goal was to describe the intricate process of the building of the international rule of law from the perspective of the United Nations and my Office in particular, and I hope that I managed to provide you with a clearer picture of what is the rule of law in the international sense and how it is promoted at the international level. It is a great privilege to be entrusted with this mandate and to be directly involved in the shaping of the legal foundation of the world of tomorrow.

I thank you all.