

**UNITED NATIONS ASSOCIATION OF THE UNITED KINGDOM**

*“Developing the Rule of Law among nations: a challenge to the United Nations”*

**Steinkraus-Cohen International Law Lecture**

by

**Hans Corell  
Under-Secretary-General for Legal Affairs  
The Legal Counsel of the United Nations**

**London  
7 July 2003**

Dame Rosalyn,  
Excellencies,  
My Lords, Ladies and Gentlemen,

*Ubi civitas, ibi jus!* Where there is a society, there is also a legal order.

Since the mists of time, human beings have created rules to regulate their societies. The oldest collection of laws is attributed to Ur-Namma, the One-Hundred-Twentieth Sumerian King after the Flood, circa 2100 BC. It is a sad coincidence that the ancient city of Ur was located in what today is Iraq.

It is true that normative systems have become more and more sophisticated. However, the issue remains the same. It is not possible for human beings to live together without norms to which they are supposed to adhere and according to which they can solve their ever-present differences.

The question is: where do we stand today? Have we been able to develop a satisfactory system? Can we justly claim to be the “civilized nations” whose recognized general principles of law shall be applied by the principal judicial organ of the United Nations – the International Court of Justice? <sup>1</sup>

I thank the UNA-UK for the invitation and for giving me the opportunity to address you today on the topic: “*Developing the Rule of Law among nations: a challenge to the United Nations.*”

An additional pleasure is to see a good friend and highly respected colleague in the chair: Dame Rosalyn Higgins, one of the fifteen judges of the International Court of Justice.

The topic is important and, I would suggest, timely. There might certainly be more “exciting” things that I could talk about, like issues relating to the Middle East,

Iraq, Africa, Cambodia, the transfer of the Lockerbie suspects for trial before the Scottish court sitting in the Netherlands. But these are issues of a more temporary nature. The question of the rule of law is forever linked to humankind.

This lecture is the first in a series prompted by the two principal interests of the late Mrs. Ruth Steinkraus-Cohen: support for the United Nations and the works of Hugo Grotius, sometimes referred to as the father of international law.<sup>2</sup>

Hugo Grotius was a truly remarkable man. He was born in Delft, near The Hague in the Netherlands in 1583, and he died in Rostock in 1645 on travel from Sweden. As a matter of fact, although he was Dutch, Hugo Grotius was Sweden's ambassador to the French Court between 1634 and 1645.

His first more renowned work was *Mare Liberum* (Freedom of the Seas) in 1609, which became the basis for the doctrine of the freedom of the seas. It was written in support of a Dutch position in opposition to claims by leading sea powers like Portugal, Spain and Great Britain, who argued certain "sovereign" rights over parts of the oceans. *Mare clausum* (closed seas) was actually the more prevalent European practice – not the ideal of *mare liberum*.

But Grotius' relatively small work (about 60 pages of text), although challenged for the next 200 years, ultimately won approval and widespread acceptance. In this context it is interesting to note that he got his inspiration from non-traditional sources; the practice of Indian Ocean States; the Arabs, Chinese, Indians and Indonesians. Grotius argued "with simple and disarming logic" that the sea is common to all, because it is so limitless that it cannot become a possession of anyone, and because it is amenable for the use of all, whether we consider it from the point of view of navigation or of fisheries.<sup>3</sup>

Perhaps even more famous is his work *De Jure Belli ac Pacis*, which was published in 1625. It could not be more relevant today in its attempt to make warfare more humane. This work is one of the most important sources of international law and

international humanitarian law. In it, Grotius examined the fundamental legal concepts – the principles of law, if you wish – as distinct from other disciplines.

Some commentators have indicated that the stature of *De Jure Belli ac Pacis* lies in its originality in systematically organizing the entirety of the subject. Before Grotius, who drew considerably from the writings of earlier publicists while using legal and moral tenets of persuasion "no one had even attempted to unify these principles so as to establish the authority of their systematic sum, in contrast to that merely of specific principles or clusters of principles".<sup>4</sup>

On this occasion, we should recognize Hugo Grotius' contribution to the creation of an international legal order. His thoughts and his work testify to the fact that it is granted to some to make a difference in this world.

Let me now focus on the United Nations. As you are well aware, the Organization was founded in 1945 after the Second World War, one of the most devastating conflicts that have visited this globe. The creation of the Organization was an attempt to "save succeeding generations from the scourge of war" as is set out in almost poetical form in the preamble of the Charter.

It is important to bear in mind the Purposes and Principles of the Charter.<sup>5</sup>

The Purposes are: to maintain international peace and security; to develop friendly relations among nations; to achieve international cooperation in many fields, in particular, in promoting and encouraging respect for human rights and fundamental freedoms; and, finally, to be a centre for harmonizing the actions of nations in the attainment of these common ends.

As to the Principles of the Charter, I should like to point to the following: all Members shall have sovereign equality; they shall fulfil the obligations under the Charter; they shall solve their disputes peacefully; and they shall refrain from threat or use of

force against the territorial integrity or political independence of any State. The Charter does not authorize the Organization to interfere in the internal affairs of any State, unless the action is taken by the Security Council under Chapter VII.

It is an amazing scenario that opens if you take a closer look at the activities in which the Organization and its funds and programmes are involved. As an indication: they range from peacekeeping missions to immunization of children, from the deep seabed to the outer space, from human rights to international criminal law. Being who you are, I am sure that you are familiar with much of this. May I nevertheless suggest a visit to the Organization, if not physically so, then through cyberspace.<sup>6</sup>

Where does the rule of law fit into this? We know what the rule of law means at the national level. But can this principle apply among nations? I suggest that it can and that this is the very essence of the United Nations, although you do not find this particular expression in its Charter.

At the national level, it is easy to see what happens when the rule of law is not present. We talk about failed States. In the United Nations, we have learned, in particular through our missions in Kosovo and East Timor, that it is of crucial importance to establish rules, law and order, police, law enforcement and an independent and impartial judiciary as soon as one possibly can. Otherwise, other elements will quickly fill the vacuum and establish their own “authority”. Thugs, criminals, mafia-like organizations will take over.

We have also seen that the varnish of civilization is thin. When the laws cannot be implemented, soon there is anarchy. Armed factions may plague innocent civilians. Killings, torture and rape may go unpunished. We may see destruction and pillage. The looting in Iraq is a case in point.

The same risks are present also at the international level – in relations among States. It is against this background that we should see the attempts by the United

Nations to slowly but surely codify international law. Much of this work is done by the International Law Commission and the Sixth (Legal) Committee of the General Assembly. But also other organs have contributed substantially, in particular, the Commission on Human Rights and the Third Committee of the General Assembly. Special international conferences are sometimes convened to finalize new agreements.

Over the years, a significant body of international law has been codified. Among the most prominent treaties should be mentioned: the Convention against Genocide from 1948, the two Covenants on Human Rights from 1966, the Convention on the Law of Treaties from 1969, the Convention on the Law of the Sea from 1982, and the Rome Statute of the International Criminal Court from 1998.

Today, the Secretary-General of the United Nations is the depositary of more than 500 multilateral treaties regulating inter-state activities.<sup>7</sup> To this should of course be added the many special treaties deposited with national governments and other organizations, global as well as regional.

This means that we already have an impressive body of law that represents an enormous collective effort by the Member States of the United Nations. These treaties establish rules of conduct for States and increasingly impact on the lives and livelihood of individuals and the business activities of corporations – whether in the area of trade, human rights, the environment or organized crime and terrorism.

It is also important to point out that most of this body of international law is faithfully applied on a daily basis throughout the world, touching upon almost all activities of human beings that one can think of. Furthermore, with increasing frequency, States turn to various institutions to settle their disputes peacefully, including before the International Court of Justice, to which Judge Higgins can testify. Because of the existence of these institutions and their interpretation of the law, many disputes are quietly solved through negotiations; we may never even learn about their existence. In

addition, States are very concerned not to be quoted as violating international law. Therefore, they often make tremendous efforts to comply.

So, what are the legal issues in which the United Nations is engaged at present? Let us look at the agendas of the International Law Commission (ILC)<sup>8</sup> and the Sixth Committee of the General Assembly?<sup>9</sup>

In recent years, the International Law Commission has successfully completed work on State Responsibility, Nationality of natural persons in relation to the succession of States and Prevention of transboundary harm. At the moment the ILC continues its work on Reservations to treaties, where the main issues include permissibility of reservations and interpretative declarations and their effects. The preliminary conclusion drawn by the ILC in 1997 that the regime of reservations is uniform for all treaties, irrespective of their subject matter, also needs to be discussed. Divergent views are held in relation to reservations to the human rights conventions.

Another topic is Diplomatic protection, where the main issues are nationality of claims, exhaustion of local remedies, diplomatic protection of natural persons, protection of legal persons and the possibility of the protection of crews of ships and aircraft.

Yet another matter is Unilateral acts of States, where the Commission will concentrate on the feasibility of codifying norms on the topic and a proposal to focus on one particular type of unilateral act, namely recognition.

On the Commission's agenda is also International liability, where it has to discuss the feasibility of developing a global approach, given diverse liability regimes for specific areas or regions.

In the United Nations we are following one topic with particular interest, namely Responsibility of international organizations. Here, the ILC will have to examine the extent to which norms on State responsibility can be applied to international organizations.

They will also discuss the scope of the study focused on internationally wrongful acts (i.e. not liability), a proposal for a definition of international organizations that departs from the traditional definition (i.e. the “intergovernmental organizations” of previous treaties) to cover new types of entities with mixed membership. A comprehensive report on attribution is expected for next year, when the information on the practice of international organizations that the ILC has received will have been analyzed.

There are two more topics on the agenda of ILC. One is Fragmentation of international law: difficulties arising from the diversification and expansion of international law. The issues are here the consequences for the international legal regime and possible outcome of the Commission's work. The other is Shared natural resources, which entails continuation of the Commission's prior work on non-navigational uses of international watercourses. The scope would initially cover the area of confined groundwater, but may then move on to other issues such as oil and gas.

Let me now move to the General Assembly and its work.

I would first mention international criminal law. As you are all aware, the creation of the International Criminal Court (ICC) represents one of the major achievements in international law during the past century.<sup>10</sup> The ICC Assembly of States Parties held elections of Judges in early February 2003. The inauguration took place on 11 March in The Hague. In April, the Assembly elected the Prosecutor following the nomination of a consensus candidate. He made his solemn declaration on 16 June. The judges elected the Registrar on 24 June.

The issues at present are, first, the need to ensure universal adherence to the ICC. Also, the emphasis has shifted towards the physical establishment of the Court and to putting into place the practical arrangements to ensure that the Court will begin to function in the near future. Outstanding matters to be considered once the Court is fully functional include, inter alia, the relationship agreement to be entered into with the United Nations.



The work on the crime of aggression will continue in the context of a Special Working Group of the Assembly of States Parties.

But there are also some sad elements that must not be left aside. The first is the attempts by one State to negotiate agreements with other States not to surrender its nationals to the Court (so-called article 98 agreements), and the other is something which in my view is a non-issue, namely the threat that the ICC is said to pose to UN peacekeeping operations and the attempts to seek exemption from the jurisdiction of the ICC for peacekeepers and other mission personnel from non-State parties.<sup>11</sup>

Among other international criminal law developments should be mentioned the two ad hoc tribunals set up by the Security Council for the former Yugoslavia<sup>12</sup> and Rwanda,<sup>13</sup> the Special Court for Sierra Leone<sup>14</sup> and the latest effort, the Extraordinary Chambers in the national courts of Cambodia for the trial of the Khmer Rouge leaders.<sup>15</sup> The latter will be based on an agreement that I signed for the United Nations in Phnom Penh a month ago, on 6 June. Unfortunately, time does not allow me to go into detail here.

The Ad hoc Committee on Jurisdictional Immunities of States has successfully completed its work. Though a decision on the final form of the draft articles was referred to the General Assembly, the results achieved reflected the resolution of outstanding issues such as: the criteria for determining the commercial character of a contract or transaction; the concept of a State enterprise or other entity in relation to commercial transactions; contracts of employment; the effect of an arbitration agreement; issues concerning measures of constraint against State property; issues concerning criminal proceedings in the context of the draft articles; and the relationship of the draft articles with other agreements.

As you may be aware, there is an Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 (on International Terrorism). This Committee has done the preparatory work that led to the adoption of the Terrorist

Bombings Convention in 1997 and the Convention for the Suppression of the Financing of Terrorism in 1999. There are presently three issues pending: the elaboration of the draft International Convention for the Suppression of Acts of Nuclear Terrorism; a draft comprehensive convention on international terrorism; and the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism.

The remaining issues in the negotiations are difficult. There are different perceptions around the world on the legality of acts carried out, in some cases by military forces of a State, and in others by organized groups or individuals combating foreign occupation. The lack of a comprehensive convention might complicate the investigation or prosecution of new forms of terrorist attacks, e.g. cyber crime. There are concerns about weapons of mass-destruction (including nuclear weapons) being used by terrorists. This common concern should facilitate an agreement on a draft nuclear terrorism treaty, which is almost entirely negotiated. Yet this has not materialized, and parallel efforts at the IAEA have run into the same problems as we have encountered in the Sixth Committee of the General Assembly.

In this context I must also highlight the importance of the Security Council resolutions on international terrorism and the work of the Counter-Terrorism Committee,<sup>16</sup> until recently chaired by Sir Jeremy Greenstock, the Permanent Representative of the UK to the United Nations. He handed over the chairmanship to his Spanish colleague only a few weeks ago.

The Ad Hoc Committee on Scope of Protection under the UN Personnel Convention met in March 2003 to continue the discussion on measures to enhance the existing protective legal regime for United Nations and associated personnel. The Committee focused on the Secretary-General's recommendation to extend the scope of the Convention to all United Nations operations. A proposal containing the text of a draft Protocol to the Convention, which would provide for the automatic application of the Convention to all United Nations operations, was presented and discussed, along with

other proposals that would not require a protocol. The purpose is to deter attacks against all UN personnel in light of the fact that in some instances such personnel are targeted precisely because of their UN affiliation or relationship

Let me mention, last among the issues on the agenda of the General Assembly, the proposal for a convention against reproductive cloning of human beings. A French-German proposal that such a convention be negotiated was considered in 2001 and 2002. No agreement was reached on the scope of the proposed convention since some States are of the view that the convention should cover all forms of human cloning, including stem cell research and the cloning of human embryos for therapeutic purposes. Discussion will continue in the Sixth Committee in the autumn. This is an extremely difficult and controversial topic. In issue are ethical considerations on the sanctity of life and human dignity. This may delay the adoption of an agreement, while events outpace international attempts to legislate on the matter. Costa Rica has recently submitted a proposal containing the complete text of a comprehensive convention outlawing all forms of human cloning.<sup>17</sup>

Now, these were a few examples of what is before the ILC and the General Assembly at present. But the fact that we already have a great number of treaties and a large body of so-called customary international law and ongoing activities to create additional law does not necessarily mean that there is the rule of law.

As a matter of fact, in early 1999, the Secretary-General of the United Nations and his senior managers identified the consolidation and the advancement of the international rule of law as the second most important goal of the Organization, after peace and security.

This has led to a number of activities within the Organization, the elements of which would be too detailed for this presentation. Suffice it to say that we have developed an Action Plan for an Era of Application of International Law.<sup>18</sup> We have also had treaty events in connection with high-level events of the General Assembly, which have led to many new signatures and ratifications of treaties. These treaty events, which

have been organized by the Treaty Section of the Office of Legal Affairs since September 2000, have already become an institution. There was one event in 2000, two in 2001 and one in 2002. The next event will be in September 2003, and the one in 2004 is already being planned.<sup>19</sup>

By constantly referring to the rule of law in his speeches, the Secretary-General is reminding States and others of the necessity to respect international conventions. *Pacta sunt servanda!* Agreements must be respected! In his report on the work of the Organization in 2000 the Secretary-General stated:

“It is not enough for States to give their consent to be bound by treaties. If the peoples of all nations are to participate in the emerging global legal order and enjoy its benefits, States must also respect and implement the obligations that the treaties in question embody. Realizing the promise of the framework of global norms developed by the international community is of critical importance. Without such a commitment, the rule of law in international affairs will remain little more than a remote abstraction.”<sup>20</sup>

In its Millennium Declaration in September 2000, the General Assembly fully endorsed these ideas and gave them its resounding support.<sup>21</sup>

The question is: what have we done in the Secretariat? A few examples:

We have placed on the Internet the United Nations collection of treaties numbering over 50,000 bilateral treaties and a similar number of related actions registered with the United Nations pursuant to the requirements of Article 102 of the UN Charter. Status information relating to the more than 500 multilateral treaties deposited with the Secretary-General and many other publications are also available on the Internet.<sup>22</sup>

The treaty web site provides a ready source of precedents, contributes to the development of legal principles and ensures transparency in international interaction – a key objective when Article 102 was incorporated in the Charter.

Users around the world currently access the UN Treaty Collection on the Internet over one million times every month. It is available free of charge to non-governmental organizations and users from developing countries in addition to the UN family and governments.

Other web sites established by the Secretariat and organs and agencies of the United Nations provide valuable assistance to States on various aspects of the international legal order.<sup>23</sup>

Consistent with the goal of seeking universal participation in the multilateral treaty framework, the Secretariat also provides assistance within its resources to States to enable them to participate in the international treaty framework. A compendium of information on assistance available through the UN system has been compiled and placed on the Internet at the Legal Technical Assistance website.<sup>24</sup> Furthermore, assistance will be provided to States to become party to treaties at the international level, i.e., to sign and ratify, accede to or undertake other treaty actions.

As an initial measure, the Secretariat has published a Treaty Handbook in the six official languages of the United Nations. This Handbook, which is also available on the Internet, provides guidance to States that wish to participate in the international treaty framework and undertake treaty actions. The Handbook is being supplemented with training sessions organized by the Secretariat for legal officers assisting governments and other interested persons. Given the interest in the training, resources permitting, the Secretariat intends to make this programme available to individual States and to the regions. It will be possible to tailor the course to meet their particular needs.

At a secondary level, the UN Secretariat will also seek to mobilise resources to assist States asking for help to give effect to their international obligations at the domestic level. This may involve providing information on treaties adopted under the auspices of the United Nations, assistance with drafting of implementing legislation, training lawyers and judges, improving the skills of administrators and training law enforcement officers.

Some training already takes place in the relevant areas through UN bodies and specialised agencies, such as the UNDP, UNCITRAL, UNEP, WIPO, ILO, and the UN High Commissioner for Human Rights. Similarly, assistance with regard to the domestic implementation of treaty obligations is made available to States, which seek such assistance through the same sources.

Certain non-governmental organizations also provide valuable assistance in training and, increasingly, are being sub-contracted for this purpose by UN bodies and governments. The International Committee of the Red Cross is also very active in the areas of Human Rights and Humanitarian Affairs.

Government funded bilateral assistance is also available and is being utilized to an ever increasing extent. This is an area where the United Nations could further cooperate with key non-governmental organizations and even private sector firms willing to make their services available.

A significant number of law schools around the world do not offer international law as a subject. I have therefore written to the deans of law schools worldwide encouraging them to include international law in their curricula, where they do not do so already.<sup>25</sup> This appeal was also published in a Newsletter from the American Society for International Law (ASIL). For its part, ASIL has taken an initiative to bring international law to the attention of the judiciary in the United States. Justice Sandra Day O'Connor has been actively engaged in this work.

Let us now look at the role of the United Nations Office of Legal Affairs (OLA).<sup>26</sup> I can assure you that it is multifaceted. In a nutshell, OLA provides the central legal service for the entire Organization. The Office consists of six units with some 160 staff members. Over 90 are lawyers, representing more than 50 nationalities. My deputy, Assistant Secretary-General Ralph Zacklin, is from the UK. Public international law, contracts, tort, administrative law, law of the sea,<sup>27</sup> international trade law<sup>28</sup> and treaty law are our main preoccupations. In some of these areas we provide technical assistance. I simply cannot go into detail here but refer those interested to an article, which I have written on the topic, and to our web site.<sup>29</sup>

What I would like to stress on this occasion is that OLA is constantly being consulted on an amazing variety of questions. Some questions relate to the work of the General Assembly and the Security Council. For example, I assisted during all the informal consultations in the Security Council lately concerning Iraq. The questions from the Secretary-General are frequent. But the vast majority comes from the many units in the Secretariat and all our offices and missions around the world. Let me give just one example to illustrate.

In executing his mandate in Kosovo and East Timor, the Secretary-General and his Special Representatives have had both to govern and legislate. In a democratic State, the latter activity is the prerogative of an elected assembly. But in these two operations, the United Nations had no choice. The United Nations could not govern without legislating. Because of the sensitivity of this activity, the Secretary-General decided that all legislation (regulations) issued in the two provinces should first be vetted by OLA. This became quite an extensive activity. Not that we questioned the substantive solutions in customs, taxation, banking or whatever the subject matter was. Our task was to review the regulations from a constitutional viewpoint: were they in conformity with the Charter, the pertinent Security Council resolutions, international human rights standards, etc.? In short, we were engaged in the same kind of activity that occurs in the Cabinet Office at the national level in order to ascertain that the Constitution and international

obligations are respected and, ultimately, that the standards of a society under the rule of law are upheld!

But now you ask: what difference has all this work of the United Nations made? We look around the world – and what do we see? Human suffering, war, terrorism, transnational crime, drug trafficking, famine, AIDS, global warming, natural degradation, desertification. In addition, there are those who even deny the existence of international law and maintain that they have the right to act as they please as long as it is in the interest of their own nation. “We will try to work with the UN, but if we are not satisfied, we will go it alone!”

Those who believe in international law are sometimes seen as idealists who do not understand that we live in “the real world”. But I reiterate what I have said so many times: being an idealist does not mean that you cannot also be a realist.

In his address to the World Economic Forum in Jordan on 23 June, the Secretary-General stated: “Idealism will not be scoffed at as naïve, but respected and taken seriously.”<sup>30</sup>

And this is where you come into the picture. I certainly cannot miss this opportunity to advocate the cause.

The United Nations is not some freewheeling Organization, flying black helicopters and threatening the sovereignty of Member States, as suggested by some in our Host Country. The United Nations is an inter-governmental organization and, as is often said, the sum of its Members. This means all of us – also you! Many of you present here today are Parliamentarians or otherwise representing constituencies. Some of you come from government, including the diplomats present, some from inter-governmental organizations, from business or from non-governmental organizations. You represent many different professions and walks of life.



Irrespective of where you go about your daily work, you can actually make a difference. You can argue in general terms with the same “simple and disarming logic” as Grotius that we need an international legal order which is respected by all States. You can make the case – to quote the Preamble of the Charter – that we must have “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and all nations large and small”.

And those who say that they will go it alone should be reminded of the words of one of the founders of the United Nations, President Franklin D. Roosevelt. On 1 March 1945, upon his return from the Yalta Conference, he stated before the US Congress:

“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.”<sup>31</sup>

This powerful message is from a man who saw the merits in creating the United Nations. This is a message that should bring us together in support of the Purposes and Principles of the Charter – in realizing that we must establish a world order based on the rule of law. Otherwise we are doomed to repeat the mistakes of the past.

You ask: what can we do? My suggestion is:

- Convey the need to respect international law in order to insure stability in international relations and assure legitimacy for actions taken by States or international organizations!
- Question, when policy suggestions or decisions are made, whether they are consistent with strengthening the rule of international law!
- Promote the study and respect for international law, especially among decision makers and those who help form public opinion, particularly journalists and commentators!

- Raise the issue of the respect for international law with candidates for elected office!
- Contribute to the strengthening of international law by working within your own area of expertise and adding a special angle, depending on your respective profession or walk of life!

The challenges are formidable. And if you look at what lays ahead it is easy to despair.

Since I took up my position as the Legal Counsel of the United Nations in 1994, I have tried to work for the ideals of the Organization from that platform. On occasions, I have also used poetry to help. Today, and before this audience, I cannot resist quoting a certain Scot who made quite a name for himself. Some of his poetry is very much United Nations philosophy, although written a couple of hundred years ago, and a hundred-and-fifty years after Grotius. I refer of course to Robert Burns.<sup>32</sup>

When he speaks to the mouse, whose little house he has just destroyed, he tries to console “the tim’rous beastie” by explaining that even “the best-laid schemes o’ mice an’ men gang aft agley”. But at the same time he envies the mouse, which is only concerned with the present:

Still thou art blest, compar’d wi’ me :  
 The present only toucheth thee :  
 But och ! I backward cast my e’e,  
   On prospects drear !  
 An’ forward, tho’ I canna see,  
   I guess an’ fear !

This is the situation in which many, many human beings find themselves in this world. They look forward and fear. It is our task to try to make a difference. To work indefatigably for the cause in which we believe: the rule of law among nations.

In his truehearted manner, Burns expressed a similar thought in his poem “A Man’s a Man for a’ That”, where he hopes that men all over the world shall be brothers “for a’ that”.<sup>33</sup>

But now you ask: what about Iraq? Surely there must be something to say on this highly interesting and controversial topic. How does what happened square with the idea of the rule of law?

Let me say the following: it is not for me to pass judgment on what happened. Others can do that, but not the Legal Counsel of the United Nations. My task is to assist the Secretary-General, who in turn makes every effort to assist the members of the Security Council in finding solutions in difficult situations.

We should note, however, that in spite of publicly stated misgivings, twice the powers of the world came to the Security Council in the last few months. Even when a new resolution was not forthcoming for the armed intervention in Iraq, the intervention itself was justified by the so-called Coalition by reference to existing Security Council resolutions and international law. Further, when the invasion was a fact, the Coalition declared to the Security Council that it assumed the responsibilities as occupying powers under existing international humanitarian law.<sup>34</sup>

And later, although many members of the Security Council did not approve of what had happened, they nevertheless recognized the facts and the obligation of the Council to act. They came together on 22 May to adopt resolution 1483 (2003), which can certainly be discussed, in particular since its language is not entirely clear. Nevertheless, the resolution contains a legal basis for the present efforts. An important effect is that it opens the door for States that are not occupying States and for the United Nations itself to assist in activities that go far beyond what is permitted for occupying powers under international law: the reconstruction of Iraq, including the establishment of an internationally recognized, representative government of Iraq.

Basically, the Security Council has functioned in the way it was meant to do under the Charter only since the Berlin Wall came down in 1989. Seen in a long-term perspective, this is a very short time. What we must hope for is that the members of the Council learn from their experiences. What we should do is to repeat with conviction and the strength of our argument that respect for international law, including in particular the system of collective security laid down in the Charter, is in the interest of all States – also the strong and powerful.

And if the argument is contested: point to the national level. See what happens there, when the rule of law is absent!

And if the argument is that national law is one thing and international law something completely different (“Our constitution is superior to all that!”)<sup>35</sup>: point to the development over the centuries. Whenever the law of a particular society has become insufficient because of development and the growth of that society, the law had to be adjusted. So, what does this mean in an era of globalization? We even talk about “the global village”! The conclusion should be obvious.

And we should not forget. Empires rise and empires fall. But the earth remains the same, although a bit more battered every time. Already some nine hundred years ago, Omar Khayyám described the situation to the point in his Rubáiyát:

“Think, in this batter’d Caravanserai,  
Whose Portals are alternate Night and Day,  
How Sultán after Sultán with his Pomp  
Abode his destined Hour, and went his way.”<sup>36</sup>

So what, then, is the challenge – to the United Nations and hence to all of us? It is to convince as many as possible – from the grass-roots level to the highest echelons of power, from those receptive to those who deny the existence of international law – that just as the sailor in a tall ship, we need a loadstar.

But our loadstar is something that we must shape together – and continue shaping, because this loadstar will never be completed or fully fixed. It is a continuous common endeavour in which we must all engage across borders and other barriers – or what seem like barriers: race, language, religion. It is something that we should hand down as a heritage to coming generations in the interest of all humankind: international law.

What we need is also statesmanship – that rare quality. What we need is men and women who can look to the horizon – who understand that this loadstar is the one after which we must all set the course and, once that is done, stay that course. To my mind comes the pilot's reassuring command, so familiar to every sailor who has been at the helm: Midships! Steady as she goes!

\* \* \*

---

<sup>1</sup> Article 38 of the Statute of the International Court of Justice.

<sup>2</sup> See e.g. W.S.M. Knight, *The Life and Works of Hugo Grotius* (1925), p. 112.

<sup>3</sup> See R.P. Anand, *Maritime Practice in South-East Asia until 1600 A.D. and the Modern Law of the Sea*, 30 Int'l and Comp. Law Quart. 440 (1981).

<sup>4</sup> Edward Gordon, 89 AJIL 461.

<sup>5</sup> These are laid down in Articles 1 and 2 of the Charter.

<sup>6</sup> <http://www.un.org>

<sup>7</sup> <http://untreaty.un.org/>

<sup>8</sup> <http://www.un.org/law/ilc/index.htm>

<sup>9</sup> <http://www.un.org/law/cod/sixth/index.html>

<sup>10</sup> <http://www.un.org/law/icc/index.html>

<sup>11</sup> See Security Council resolutions 1422 (2002) of 12 July 2002 and 1487 (2003) of 12 June 2003.

<sup>12</sup> <http://www.un.org/icty/index.html>

<sup>13</sup> <http://www.ict.r.org/>

<sup>14</sup> <http://www.sc-sl.org/>

<sup>15</sup> General Assembly resolution A/RES/57/228 B of 13 May 2003.

<sup>16</sup> <http://www.un.org/Docs/sc/committees/1373/> and <http://untreaty.un.org/English/Terrorism.asp>

<sup>17</sup> Doc. A/58/73.

<sup>18</sup> [http://untreaty.un.org/ola-internet/cover\\_sheet.htm](http://untreaty.un.org/ola-internet/cover_sheet.htm)

<sup>19</sup> <http://untreaty.un.org/English/treaty.asp>

<sup>20</sup> Report of the Secretary-General on the work of the Organization, Official Records of the fifty-fifth session of the General Assembly. Supplement No. 1 (A/55/1).

<sup>21</sup> General Assembly resolution A/RES/2000/2, paras. 9, 24 and 25.

<sup>22</sup> <http://untreaty.un.org/>

<sup>23</sup> <http://www.un.org>

<sup>24</sup> <http://www.un.org/law/technical/technical/main.htm>

<sup>25</sup> <http://www.un.org/law/counsel/info.htm>

<sup>26</sup> <http://untreaty.un.org/ola-internet/olahome.html>

<sup>27</sup> <http://www.un.org/Depts/los/index.htm>

<sup>28</sup> <http://www.uncitral.org/>

<sup>29</sup> Hans Corell. *United Nations Office of Legal Affairs*. In: *International Law: Theory and Practice*. Ed. K. Wellens. Kluwer Law International (1998) (p.305-322) Also in: *Svensk Juristtidning*, Vol. 10, 1999: 933-953. See also note 26.

<sup>30</sup> Press Release SG/SM/8759, ECO/31.

<sup>31</sup> See e.g. *The Franklin Delano Roosevelt Memorial*, Chronicle Books, San Francisco (1997), p. 123. See also <http://www.parksandhistory.org>

<sup>32</sup> Robert Burns (1759-1796). "To a Mouse" and "A Man's a Man for a' That". See e.g. *The Complete Illustrated Poems, Songs and Ballads of Robert Burns*. Lomond Books. The Bath Press, Avon, 1992.

<sup>33</sup> From "A Man's a Man for a' That":

Then let us pray that come it may,  
           (As come it will for a' that,)
 That Sense and Worth, o'er a' the earth,  
           Shall bear the gree, an' a' that.  
 For a' that, an' a' that,  
           It's coming yet for a' that,  
 That man to man, the world o'er,  
           Shall brithers be for a' that.

<sup>34</sup> Doc. S/2003/538.

<sup>35</sup> In international law, reference to one's own Constitution is not a valid defence. If a State enters into an international agreement, it is the responsibility of that State to see to it that the agreement can be honoured.

<sup>36</sup> In Edward Fitzgerald's interpretation. Eqbal Printing and Publishing Organization, Tehran.