

**ALL AFRICA CONFERENCE ON LAW, JUSTICE AND  
DEVELOPMENT**

**HELD UNDER THE AUSPICES OF THE SUPREME COURT OF NIGERIA AND  
THE MINISTRY OF JUSTICE OF NIGERIA AND THE PATRONAGE OF H.E.  
CHIEF OLUSEGUN OBASANJO, GCFR, PRESIDENT OF THE FEDERAL  
REPUBLIC OF NIGERIA**

**OPENING CEREMONY**

*“Law, Justice and Development: A Challenge for Africa in the 21<sup>st</sup> Century”*

**ADDRESS**

**BY**

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Your Excellency, Chief Olusegun Obasanjo, President of the Republic of Nigeria,  
Honourable Chief Justice Uwais,  
Excellencies,  
Distinguished Colleagues,

You have just listened to the message to this Conference from Secretary-General Kofi Annan. Through his actions and his many statements in support of the rule of law in international and national relations Kofi Annan has demonstrated that he is keenly aware of the role that law and the legal profession plays in any society. Because of his background and his experience Kofi Annan is also especially well placed to understand the relationship between Law, Justice and Development.

Since – much to his regret – the Secretary-General was unable to participate, he asked me to represent him. I am greatly honored to be present on this occasion, and I look forward to interesting discussions. Let me express the hope that they will have a very practical focus.

I have been asked to address you on the topic “*Law, Justice and Development: A Challenge for Africa in the 21<sup>st</sup> Century*”. In so doing I should like to focus very briefly on six issues of interest to this Conference: the role of lawyers, the importance of regional experience, rule of law and human rights, criminal law, commercial law and legal technical assistance.

First, as you are all well aware, lawyers have a special responsibility to promote change and social progress in any given society. It is therefore a source of great satisfaction to note that African jurists have now decided to join their efforts within the framework of the Coalition of African Jurists to help the African continent in its ongoing process of transformation and sustainable development.

Current events in the world are a striking reminder of the irreplaceable role that law and justice have to play for maintaining peace and promoting development. The troubling situation in some parts of Africa you know only too well.

Law and justice present a major challenge for Africa's development for several reasons: the long neglect of law and justice in many African countries; conditions inherited from colonial rule; failed efforts to create wealth through employment opportunities. As a result, development has not taken place as many had hoped for. Poverty has increased. And, even more seriously, in some cases leaders have been clinging to power in a way that has caused growing discontent and sometimes resulted in armed conflicts and civil wars.

This has created a vicious circle, which has further contributed to widespread social and economic regression over the continent. The challenge that Africa is facing in the 21st century is formidable. By stepping forward, African jurists offer hope that Africa can and will break this vicious circle.

The Coalition of African Jurists is a promising structure that will assist African jurists to cooperate efficiently. We hope that its members will have great impact on the development agenda for Africa. The Coalition needs to be supported. If requested, the United Nations will be eager to lend its support to sound initiatives that may be put forward by this Conference, in particular through technical assistance.

Secondly, the importance of regional experience.

The last century saw unprecedented developments in international law, particularly in its codification and progressive development. The United Nations had a leading role in these efforts. The collective security system of the UN

Charter is of paramount importance for the maintenance of international peace and security and peaceful settlement of disputes.

At the same time, the Charter acknowledges the central role that regional arrangements and agencies can play. The Organization of African Unity played a crucial role in this regard. There is the expectation that its successor since March 2001, the African Union, will play an even more prominent role.

The contribution of African countries to the law relating to peacekeeping represents interesting aspects concerning the relationship between regional arrangements and the Charter. Recent examples are: the involvement of the Economic Community of West African States (ECOWAS) in Liberia, Sierra Leone, Guinea-Bissau and Guinea; the Mission for the Implementation of the Bangui Agreement in the Central African Republic and the Southern African Development Community in Lesotho.

The Constitutive Act of the African Union provides that the Union has the right to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. It also gives Member States the right to request intervention from the Union in order to restore peace and security. Most importantly, it condemns and rejects unconstitutional changes of governments.<sup>1</sup>

### Third, rule of law and human rights.

Law, in particular international law, and respect thereof was fundamental for the smooth transfer of power from the colonial phase into the independence stages for many African countries. Having accepted the primacy of international law, African countries have, since the 1960s, continued to make their contribution to its codification and progressive development. I could mention as examples the law of treaties and the law of the sea.

African countries have also given effect to the primacy of international law in many of the post independence constitutions. The Universal Declaration of Human Rights was used in the 1960s as the basis for Bills of Rights in numerous constitutions. Those promulgated in later times have relied even more on international law.

As stressed in the Universal Declaration of Human Rights, an essential factor in the protection of human rights is respect for the rule of law. This is a fundamental value of all legal systems. Indeed, respect for the rule of law is a defining feature of law itself.

There are two requirements of the rule of law that are of particular importance to the United Nations in its task of promoting respect for human rights.

The first is that citizens must be able to find out what laws apply to them. This entails not only that laws must be published. There must also be professional lawyers who are accessible to members of the public and can advise them what laws apply to them and can explain those laws to them. To do this, the lawyers themselves must be learned in the laws of the land.

This imposes a special responsibility on lawyers and on those who educate and train them. Improving legal education is of critical importance for producing new generations of lawyers who will be prepared to uphold the rule of law irrespective of the personal cost they may be forced to pay. Here also, the United Nations stands ready to lend its support.

The law of human rights and international law more generally is of particular importance in this context. Today, lawyers need to be familiar with this law.<sup>2</sup>

Another requirement of the rule of law is that the law as announced and the law as applied be one and the same. The fact that international law, including the international law of human rights, is part of the law of the land will be of little avail, if those who are called upon to apply and enforce the law – prosecutors, police officers, prison officials, lawyers, but most of all the judiciary – are unable to understand it and apply it correctly.

There is, then, a responsibility which all lawyers share, flowing directly from the precepts of the rule of law, to consider what steps they might take towards ensuring that the members of their profession are trained in international law, including the law of human rights.

Fourth, criminal law.

No doubt, you will have noticed that, over the last ten years, the United Nations has taken decisive steps towards bringing about a world in which international law is actually applied and justice is done. International criminal law has been central in this effort.

Over the course of the twentieth century, States put in place a comprehensive set of international legal instruments designed to prevent the commission of atrocities and to curb the inhumanities that all too often are the result of warfare. However, serious violations of international humanitarian law went unpunished. The message to those who might be tempted to violate the law was that they had nothing to fear.

The decision of the Security Council in 1993 to establish an international criminal tribunal for the former Yugoslavia was therefore a decisive break with this regrettable record of inaction. The Member States of the United Nations, acting through the Security Council, showed their determination at last to take

concrete steps to enforce the rules of international humanitarian law that they themselves had created and which they had undertaken to respect.

This determination was shown once again a year later when the Security Council established the International Criminal Tribunal for Rwanda.

The establishment of these two Tribunals also helped to inspire the Member States of the United Nations to finalize an even larger project: the creation of a permanent International Criminal Court. This work was actually initiated already in 1948. But it would take fifty years for this effort to come to fruition. On 17 July 1998, a United Nations Conference adopted the Rome Statute of the International Criminal Court.

African countries played a visible role in the work leading to the establishment of the International Criminal Court. They were part of the group of like-minded States, and Senegal was the first country to ratify the Rome Statute. Doudou Thiam, who we all have in fond memory, was a Special Rapporteur on the Draft Code of Offences Against the Peace and Security of Mankind, which was inspirational in articulating crimes within the jurisdiction of the Court.

The Rome Statute entered into force on 1 July 2002. This week the Assembly of States Parties is electing the judges.

Some Governments remain wary of this enterprise. I am convinced, though, that their skepticism does not flow from any disagreement with the importance of compliance with international humanitarian law or from any principled opposition to the notion that those who are guilty of the most atrocious crimes known to humanity should be tried and punished, as the law prescribes that they should.

In this context I should also like to mention the Special Court for Sierra Leone. This Court is a *sui generis* independent international institution. It was established by an agreement between the United Nations and the Government of Sierra Leone at the behest of the Security Council. It is a remarkable effort by the world community and a Member State, whose people have suffered brutally in a civil war, to bring to justice those most responsible for the crimes committed. The signing of the agreement on 16 January last year together with Solomon Berewa, then Minister of Justice, now vice-President of Sierra Leone, is one of my most rewarding moments in the service of the United Nations.

Let us hope that this Court, and the other very important component in the national healing process, the Truth and Reconciliation Commission, will be successful in their important tasks.

In this context another phenomenon that is plaguing many Member States must be mentioned: corruption. It is commonly understood that corruption is an extremely serious threat to society, and certainly a factor that severely hampers development. This is why I suggest that the fight against corruption should be high on your agenda.

The United Nations is deeply engaged in combating corruption, *inter alia* through its Office on Drugs and Crime.<sup>3</sup> Other international organizations are also active in this field, e.g. the World Bank,<sup>4</sup> the Council of Europe, the European Union and the Organisation for Economic Cooperation and Development (OECD).<sup>5</sup>

May I suggest that the way in which the legal profession and, in particular, the judiciary deals with corruption is probably the most important factor for the prospects of success in fighting this scourge. Needless to say, if this phenomenon is found within the ranks of the legal profession, the battle is lost



from the very beginning. The importance of dealing effectively with corruption cannot be overestimated in a discussion on justice and development.

Fifth, commercial law.

One specific activity, which I believe is essential for establishing conditions for sustainable economic and social development, is the work of the United Nations Commission on International Trade Law. This Commission is a subsidiary body of the United Nations General Assembly, widely known as UNCITRAL, in French CNUDCI.<sup>6</sup>

For a long time, economists and others thought that the improvement of welfare of developing nations depended on the availability of capital investment and the right economic strategy. It has become clear, however, that hopes of lasting prosperity are realistic only if they are based on a balanced combination of various factors. These include: modern commercial laws, contractual discipline and commercial practices characteristic of long-term business relationships.

To achieve this, law reform has become an essential component of national policies. For reform to be effective, care must be taken to ensure that businesses, the legal profession and judges understand modernized laws and practices. It is also necessary for foreign trading partners to understand and accept the results of law reform.

Commercial law reform will therefore be successful only if it is based on models that are acceptable in systems of different legal traditions and are suited for countries at different levels of economic development.

UNCITRAL is serviced by a branch of my Office, located in Vienna, Austria. It has an excellent track record in producing universally acceptable

model laws, treaties, legislative guides, contractual guides and models that can be successfully used in the law reform process. These texts are designed with particular attention to the need for balanced and equitable business relations, reduced transaction costs, control of business risks, and the enforceability of obligations.

There are several reasons why texts elaborated by UNCITRAL have been so successful. First, I would note the balanced and universal composition of the Commission; both government and industry representatives participate in its work. Another reason is the well-researched preparatory studies and drafts. To this should be added the important fact that the decisions at all stages of the UNCITRAL drafting process are taken by consensus.

Laws that are outdated or are not easily understood by domestic and foreign parties pose a major obstacle to sustainable economic growth. They increase transaction costs and commercial risks and seriously impede the participation of commercial entities in international trade. In such a legal environment, small and medium-sized enterprises with limited experience and access to legal advice encounter particular difficulty in penetrating new markets.

Allow me to give you just two examples of benefits that modernized and harmonized commercial laws can bring.

Electronic commerce is becoming a reality also in Africa, as electronic mail and the Internet become more accessible for businesses. The United Nations has initiated work to find ways to accelerate the use of these modern methods of communication in developing countries and help reduce the so-called “digital divide”. Along with this progress, electronic commerce is becoming an indispensable way for businesses to reduce transaction costs and facilitate penetration of new markets.

Electronic commerce benefits all, but is of particular benefit to small enterprises and offers new opportunities for gainful employment of groups of persons such as women working from home or close to home and physically handicapped persons.

However, electronic commerce cannot prosper without the adaptation of national laws and rules, which were largely written against the background of paper-based commercial communications. Such adaptation of laws should be based on the harmonized, balanced standards elaborated by the United Nations. The UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures have already been enacted in both developed and developing countries and are widely regarded as the most authoritative sets of international legal standards for electronic commerce.

Another crucial aspect for poverty reduction through enterprise development is the enhancement of the conditions under which business entities have access to credit. At present, financing is often not available at commercially affordable terms to creditworthy enterprises because national laws have not been updated and are not suited to certain types of financing transactions. These transactions include those that allow the recipient of financing to offer commercial goods and receivables as security. The solution is to enact laws that facilitate such transactions and take into account legitimate interests of creditors and debtors. To this end, UNCITRAL is currently preparing legislative guidelines on secured transactions.

Sixth, and finally, technical assistance.

The Secretary-General noted the following in his Millennium Report:

“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>7</sup>

Recognizing the difficulties involved in domestic jurisdictions in realizing this goal, the Secretary-General also said that all too often, individuals and corporations find that they are denied the rights and benefits that international law and treaties provide. Sometimes national authorities refuse to recognize and respect their obligations under international law, even where the state has voluntarily subscribed to the relevant treaties. More often though, such authorities simply lack the necessary expertise or resources to ensure that their obligations are properly implemented and applied.<sup>8</sup>

In order to build national capacities to implement treaties more effectively, the Secretary-General has requested every office, department, programme, fund and agency of the United Nations to review its current activities and to consider what else it might do, within its existing mandate and given existing resources, to promote the application of international law. He focuses, in particular, on providing technical assistance to help Governments implement their commitments under the treaties to which they are or might wish to become parties.

Consistent with these sentiments, the *Programme for an Era of Application of International Law* further recommended an increase in the assistance provided by the United Nations system to needy countries to enable them to participate in the international treaty framework.<sup>9</sup>

However, it is very important to be able to identify situations where legal technical assistance can effectively be rendered. This is where I see a critical

role for the legal profession at the national level. In other words, this is where you have an important role to play. There are at least four determining factors that must coincide:

Knowledge identify the individuals who have the pertinent and up to date knowledge of the field of law in question

Language identify the common language in which these individuals and those who are to receive the assistance are able to communicate easily

Money identify the resources for the financing of the project; these resources may not necessarily be available within the United Nations Secretariat, but are more likely to be found in one of the Organization's funds or programmes – like the United Nations Development Programme (UNDP)<sup>10</sup> – or in another international organization, like the World Bank, or in a development agency in a Member State, or in a foundation that specializes in this field

Need identify and define the assistance required in a distinct project that can be readily understood by all concerned

Distinguished participants,

With these brief reflections I should like once again, on behalf of the Secretary-General, to congratulate you on your initiative and on organizing this Conference. This effort has the strongest support of the United Nations.

Thank you for your attention.

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<sup>1</sup> Article 4 (h), (j) and (p).

<sup>2</sup> See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, annexed to General Assembly resolution 53/144 of 9 December 1998.

<sup>3</sup> <http://www.unodc.org>

<sup>4</sup> <http://worldbank.org>

<sup>5</sup> <http://www.oecd.org>

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

<sup>7</sup> Para. 277, *Report of the Secretary-General on the work of the Organization*, Supplement No.1 (A/55/1).

<sup>8</sup> *Ibidm.*

<sup>9</sup> <http://www.un.org/law> then go to both “Office of Legal Affairs” and “Technical Assistance”.

<sup>10</sup> <http://www.undp.org>