

**NATIONAL SYMPOSIUM ON THE DISCIPLINES OF
INTERNATIONAL RELATIONS AND LAW IN INDONESIA**

“The United Nations and Its Current Challenges”

Keynote address

by

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Due to unforeseen events, the Legal Counsel was unable to travel to Jakarta. This address was therefore delivered on his behalf by Mr. Palitha Kohona, Chief of the Treaty Section of the Office of Legal Affairs.

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Foreign Minister Dr. Wirajuda,
Distinguished Members of the Parliament of Indonesia,
Distinguished Members of the Government of Indonesia,
Justices and other colleagues from the legal profession,
Excellencies,
Ladies and Gentlemen,

In his Millennium Report - to which the terms of reference of this symposium allude - the Secretary-General emphasized that, if we take a long term view, the expansion of the rule of law has been the foundation of much of the economic, social and political progress achieved in the last millennium. He reminds us, however, that this remains an unfinished project, especially at the international level, and that our efforts to deepen and consolidate it must continue.¹

Dr. Wirajuda, I would like to thank you and the Government of Indonesia for the kind invitation to Jakarta and to attend the “National symposium on the disciplines of international relations and law in Indonesia” together with you.

The well-chosen topic of this symposium provides me with the opportunity to share with you some of my thoughts on the relationship between these two disciplines. Within this framework, you have invited me to focus in this keynote address on the current challenges that the United Nations is facing. I will have to limit myself to some

selected issues mainly in the legal field. Let me start with the overarching question of the rule of law in international relations. You may ask: Why such a broad topic when there are so many urgent concrete issues at the Organization's doorstep? My answer is: Because all these other issues are but symptoms of the absence of or weak development of the rule of law!

The rule of law in international relations

Coming back to the words of the Secretary-General that I just quoted, there seems to be an increasing understanding among states that international relations have to be governed by law. I stand before you as a firm advocate of the rule of law in international relations. Now, what does that mean?

With regard to the rule of law at the national level, suffice it to say that it implies that within a state, the exercise of power in the public domain should be performed with full respect to the laws that apply.² Everyone, including the head of state, the parliament, the government, the judiciary and other authorities are bound by the constitution and the laws of the state and must act within the parameters set by the same. In this context, I would like to point to the fact that the United Nations makes great efforts in promoting the rule of law at the national level, especially through the "good governance" programs of the United Nations Development Programme and the United Nations High Commissioner for Human Rights.

The principle of the rule of law is also applicable at the international level, or more specifically, in international relations. According to the preamble of the Charter, the peoples of the United Nations are determined “to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. I intend to elaborate in greater detail on the significance of multilateral treaties for the advancement of international law in my presentation in the first session of the symposium.

Today, I would like to emphasize that the United Nations, its Member States and the Secretariat have made great efforts to enhance the rule of law in international relations. An important example in this respect is the United Nations Decade of International Law (1990-1999).³ As stated in a General Assembly resolution of 17 November 1999, “the Decade has contributed significantly to the strengthening of the rule of international law”.⁴ This has been achieved by promoting the means and methods for the peaceful settlement of disputes between States; by encouraging the progressive development of international law and its codification; and by encouraging the teaching, study, dissemination and wider appreciation of international law.⁵

The Decade was successful due to the concerted efforts of States, international organizations and institutions and the international society at large, including eminent representatives of the legal profession, practitioners and academics alike. The contribution of the Decade to the promotion of the rule of law may be illustrated by the adoption of many important conventions, including the 1998 Rome Statute of the

International Criminal Court, a historic achievement. It will have great importance for the establishment of an effective system of enforcement of international law, for the fight against the most heinous crimes in this world and for putting an end to impunity.

In this context, I note with interest that the organizers of this symposium has declared that one of its goals is to give United Nations practice of international relations and law a predominant place in the teaching at Indonesian law schools. As a matter of fact, I have written to deans of law schools throughout the world, encouraging the broader teaching of these disciplines.⁶ To assist those universities that may need help in developing suitable curricula for courses in international law and in identifying relevant teaching materials, I have enlisted the assistance of a team of prominent academic lawyers. To the many colleagues from academia among the participants of this symposium, I would like to send a message of encouragement and an invitation to join this network and, as the case may be, to take advantage of the resources that it offers. Moreover, I would like to recall that the dissemination of information concerning United Nations activities in the field of international law through the electronic medium has advanced considerably in later years. Notable examples are the creation of the United Nations web site on international law⁷ and the establishment of the United Nations treaty database.⁸

I should also like to mention that the Secretary-General and his senior managers identified in early 1999 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 developed an Action Plan for an Era of Application of International Law.⁹ Elements of this plan are, among other things:

- Encouraging the participation in multilateral treaties
- Assisting States to prepare necessary implementation legislation
- Training of judges, practicing lawyers and others who are involved in the application of the law,
- Educating and informing the general public about international law and about means of recourse against violations of this law.

The Millennium Declaration

Ladies and Gentlemen,

Almost to the day three years ago, the United Nations General Assembly at the level of heads of state and government adopted the Millennium Declaration,¹⁰ to which the program of this symposium refers. This Declaration was adopted to translate fundamental values essential to international relations in the twenty-first century into actions. The Millennium Declaration identifies certain key objectives. I would like to cite some that relate to the legal field. These are:

- To strengthen respect for the rule of law in international as in national affairs and, in particular, to ensure compliance by member states with the decisions of the International Court of Justice, in compliance with the Charter of the United Nations, in cases to which they are parties

- To make the United Nations more effective in peaceful resolution of disputes
- To ensure the implementation by states parties of treaties in areas such as arms control and disarmament and of international humanitarian law and human rights law, and to consider signing and ratifying the Rome Statute of the International Criminal Court
- To take concerted action against international terrorism, and to consider acceding, as soon as possible, to all relevant international conventions.

I would like to seize this opportunity to focus on the last two of these key objectives: the International Criminal Court and action against international terrorism. The recent tragic events in your country, in the Middle East and in Iraq are somber reminders of the need for the latter.

The International Criminal Court

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.¹¹ 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. As a matter of fact, the Assembly is meeting this week in New York to address a number of important issues. I understand that Indonesia is considering acceding to the Rome Statute.

What is important now is to ensure universal adherence to the ICC. This is so, in particular, since efforts are being made to impede the advancement of this Court. As you may be aware, there are attempts by one State to negotiate agreements with other States not to surrender its nationals to the Court (so-called article 98 agreements). Also some suggest that the ICC is a threat to United Nations Peacekeeping operations and seek exemption from the jurisdiction of the ICC for peacekeepers and other mission personnel from non-State parties.¹² In my view, this is a non-issue that should not appear on the agenda of the Security Council.

Ladies and Gentlemen,

Many among you have the power and privilege to directly influence or even determine the destiny of your country. Some of you are Members of Parliament, others Members of Government. I know that the competent organs of your country are currently contemplating whether or not Indonesia should adhere to the Rome Statute of the International Criminal Court. The decision you will soon have to take is a sovereign one. It is an important one, but I believe that it is a simple one. It is an important issue for the international community and thus also for Indonesia to support an institution the task of which it is to end the impunity that has haunted mankind since time immemorial. It is time to breach with this tradition. It is time that perpetrators of the most heinous crimes under international law are brought to justice.

UN action against terrorism

With respect to terrorism, the international community must stand firmly together

using the tools international relations and the law provide. A few weeks ago this city was hit by a terrorist attack, and on 19 August, the UN Headquarters in Baghdad was the target of a vicious bombing attack. Many innocent lives of your fellow citizens and guests of your country were lost and families were destroyed. In the United Nations community we mourn our colleagues and friends who were killed in Iraq. Others were maimed and many traumatized, perhaps for life. All of us are reeling from the pain, some also with anger. The perpetrators of such outrageous and abhorrent crimes and their accomplices and supporters must be brought to justice.

An Ad Hoc Committee on International Terrorism established by the General Assembly¹³ did the preparatory work that led to the adoption of two important conventions: the Convention against Terrorist Bombings 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 finalized. Yet this has not materialized, and parallel efforts at the International Atomic Energy Agency have run into the same problems as we have encountered in the Sixth Committee of the General Assembly. May we count on Indonesia's support for advancing this work?

It should be stressed that national measures against terrorism need to be taken in full conformity with international law. Our fight against the scourge of terrorism should be underpinned by a conviction of the moral basis of our actions. And this can be ensured only through the adherence to the framework of international norms. As the Security Council declared earlier this year, "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law".¹⁴ The United Nations, including the Office of the High Commissioner for Human Rights, has engaged in an extensive dialogue with States on the question of protecting human rights in efforts against terrorism.

In this connection, I have learned that Indonesia is now considering possible revisions to its law on terrorism. I would therefore like to take this opportunity to urge the Government of Indonesia to take all necessary steps to ensure that its struggle against

the scourge of terrorism is conducted fully within the bounds of international law. I refer to what Secretary-General Kofi Annan said in March of this year, in remarks to a special meeting of the Counter-Terrorism Committee of the Security Council with international, regional, and sub-regional organizations: “Terrorist acts, particularly those involving the loss of life, constitute grave violations of human rights. Our responses to terrorism, as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension.”

In this context, I would also like to take the opportunity to encourage Indonesia to ratify the 1994 Convention for the Protection of United Nations and Associated Personnel. 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, is presently discussed. 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. The sad events in Baghdad underline the urgency and the justification of these efforts even more.

Current crises

Finally, I would be remiss, if I did not make a reference to the many crises that the United Nations is dealing with at present: Afghanistan, Iraq, the Middle East, Liberia, Congo and the Great Lakes region, just to mention the most serious. It is not for

me to go into detail here. But by referring to them, I simply want to point to the fact that the Organization is an indispensable ingredient in the global efforts to maintain international peace and security. We must therefore all work to support the United Nations. I note in this context a statement in June of this year by the Foreign Ministry of Indonesia expressing the hope to strengthen multilateralism through the United Nations and that the Organization should play a central role in resolving issues of international peace and security. This is precisely what the United Nations is about. And this is the Organization's – and our – main challenge for the future.

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¹ UN doc. A/54/2000. The quotation is from paragraph 326.

² Sir Arthur Watts, *The International Rule of Law*. 36 Ger.Y.B.Int'l L. 15 (1993). This writing provides an excellent overview of the questions relevant to the topic. See also Ian Brownlie, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations*, 1-17, 213-28 (1998).

³ General Assembly resolution 44/23 of 17 November 1989.

⁴ General Assembly resolution 54/28 of 17 November 1999.

⁵ See Article 13 of the Charter of the United Nations.

⁶ Hans Corell, *An Appeal to the Deans of Law Schools Worldwide*, available at <http://www.un.org/law/counsel/info.htm>.

⁷ At <http://www.un.org/law/>.

⁸ At <http://untreaty.un.org/>.

⁹ At http://untreaty.un.org/ola-internet/cover_sheet.htm.

¹⁰ General Assembly resolution 55/2 of 8 September 2000.

¹¹ <http://www.un.org/law/icc/index.html>.

¹² See Security Council resolutions 1422 (2002) of 12 July 2002 and 1487 (2003) of 12 June 2003.

¹³ General Assembly resolution 51/210 of 17 December 1996.

¹⁴ See Security Council resolution 1456 (2003).