

The Development of an International Community Based on Law*

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Rector, Distinguished Professors, Ladies and Gentlemen!

Let me first express my sincere and respectful thanks to the University of Padova for awarding me the *Laurea Honoris Causa*. As a resident of the North of Europe the Laurea awarded to me here in the South of the continent strengthens my feeling that today the whole of Europe is my home.

1. The Expansion of International Law and Society

When I was a student, some 50 years ago there were still learned professors who could write treatises covering the whole field of international law, just as Hugo Grotius wrote *De Jure Belli ac Pacis* in 1625. For obvious reasons they did not write about the law of the European Union, nor about international nuclear law, international space law, or international environmental law. These branches did not exist.

We are moving into the 21st century and the growth of knowledge, international law, international communications, transport, trade and finance is accelerating at an unprecedented pace. The overall gains are great in standards of living and longer life spans, but the industrialisation, urbanisation and globalisation also have problems. What particularly interests us, as global citizens and students of law and political science, is that these developments call for more organisation and legal regulation, not least at the international level.

Air traffic, wave lengths, emissions of CO₂, the freer movement of capital, people and goods, the need for equivalence of academic degrees and a myriad of other issues require common standards. Moreover, often authorities of some kind or at least secretariats are needed to look after implementation.

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It is not hard to see that frequently the development in the spheres of law and social organisation is not matching the economic, technological and other development on the ground. At the national level the deficiencies are not as glaring as at the international level. Our national societies, whose legislatures can adopt binding rules by majority decisions, are better equipped for making laws and taking decisions and executive action than the international community, which still mostly adopts its rules only by agreement between states.

2. Integration Leads to Peace

The European Union is, of course, a timely and indispensable, though sometimes perhaps clumsy, mechanism to handle integration in our region. It is both prompted by the greater economic and social integration of states in Europe and promoting that integration. As was intended from the outset this integration will also uphold the requirement for high standards of human security throughout the Union and rule out the use of force between its member states. It is a peace project.

I am optimistic enough – some would say enough naïve – to believe that also the gradual *global integration* that the modern economic and technical evolution brings will tend to push the relations between blocks and continents toward peace and help to promote human rights and human security everywhere.

Let us note that at the beginning of this millennium there are *no significant territorial conflicts* between continents, blocks and great powers. Only the status of Taiwan is potentially a source of great power conflict. After the collapse of the Soviet Union there are also *no state driven ideological crusades* looming. The important result is détente between the great powers. Paradoxically in this situation, the United States is exploring new types of nuclear weapons while many European states are shrinking their military resources and gearing them from the old task of territorial defense to the new task of participating in international peacekeeping.

There has been some talk of a «war of civilisations». Considering the military realities of today such a war seems implausible, but one of the sad consequences of the war in Iraq has been to push many moderate Muslims in an anti-American and anti-Western direction and to stimulate terrorism.

The market economy plus some social welfare – admittedly with great variations – is espoused as economic system by most states. Democratic pluralism is professed as the ideal, if not practiced, by most states and pragmatism in foreign affairs is practiced by most states. The Oder-Neisse is no longer a lethal line between a Communist East and a Democratic West but an internal waterway within the European Union. Across the river Amur, where the Russians and the Chinese used to trade bullets, they now trade goods.

3. A Global Village with Security Deficits

With the awareness that the people of the world have come so much closer to each other we have begun to talk about the «global village». We know that the village has succeeded in agreeing on many legal rules and common standards and in handling a myriad of technical questions. However, we are also aware that the village does not yet provide its state members fundamental security against the use of armed force or environmental disaster. Nor does it in many places provide the individual with human security.

Some state members of the global village still spend vast sums to remain armed and to develop new arms. And while world wars may be a horror of the past, civil wars and regional conflicts continue to rage. Furthermore, when we begin to hope that states are giving up the habit of destroying each other we find that they are joining hands to destroy our common environment – the soil, the atmosphere, the seas and the climate!

How is the world equipped to cope with these and other problems that face it? And how have we done in our common efforts?

4. World Co-operation to Solve Common Problem. Role and Record of the United Nations

The United Nations marks a vast improvement over the League of Nations but as a joint instrument of member states it is far from adequate to solve the world's joint problems. Some critics have stressed that the Charter is not designed to meet the

problems of terrorism and the threats of weapons of mass destruction. In March 2003 some critics said that the Security Council would make itself «irrelevant» if it did not support the armed action against Iraq.

When considering such criticisms we might do well to remember, first of all, that apart from laying down agreed basic rules for state conduct the UN Charter is a constitution, creating instruments for co-operation between the states members. These instruments – the General Assembly, the Security Council, etc. – are *like the instruments of an orchestra*. If the members choose not to play on them or if they play unco-ordinated no harmonious sound can be expected. The failures would lie with the players, not with the instruments.

If we find, on the other hand, that failures in functioning are due to weaknesses in the construction or maintenance of the instruments it is meaningful to try to redesign or adapt them. It is currently maintained that modifications in the composition of the Council and some restrictions in the right to use the veto would be beneficial for the functioning of the Council. This is probably true. To be effective the Council must represent real power. Right after the Second World War this meant military power. Today the economic strength and relative size of states are also relevant for power and influence. While a modification of the composition of the Council would need to make it more representative of the whole world it should also ensure that it be given greater weight. Perhaps the veto could be limited to decisions under Chapter 7 of the Charter regarding action against threats to the peace, breaches of the peace, and acts of aggression. When critically examining the UN we should also remember that while it is not the only multilateral institution serving the world community, for many global problems there are no good substitutes. We should take care not to undermine it. Mr. Hammarskjold is reported to have said that the UN was not created to take us to heaven but to prevent us from going to hell. With this in mind one should seek realistic assessments and try to remedy weaknesses.

As Secretary-General Kofi Annan has forthrightly recognised we need to take a fresh look at our global village council, especially after the serious controversies in the case of Iraq. He has appointed a panel of very experienced persons, which will present its advice in a year's time. There should also be a lively inter-

national discussion. We are all concerned. We should look not only at the way the organisation and its organs function, but also at basic Charter rules, which member states have agreed to follow in their international relations. We should recognise both achievements and identify shortcomings.

5. Achievements of the UN

The first feature to recognise in the UN is its *universality*. While the League of Nations was mainly a club of European states, the de-colonisation has made the United Nations truly universal. The General Assembly offers an incomparable forum in which all states in the world can present their ideas, grievances, proposals. In the third week of September the general debate of the Assembly attracts, increasingly, heads of states and governments. We have to recognise that the back side of universality is size. With the expansion of membership from 50+ to 190+ the General Assembly is more deliberative than operative. Also with countries like Pitcairn Island and China each having one vote and a large number of mini-states being members the Assembly is a long way from fairly representing the world. Nevertheless, positions adopted by consensus or very strong majorities may carry great political weight. If the Iraq issue had been taken up in the Assembly in March 2003 it would have been evident that a vast majority of the world's countries were against war at that time.

Some people sarcastically call the whole UN a «talk shop» unable to act. Perhaps we should remember, however, that a main ground for recent criticism of this kind has been that a majority of the Security Council refused to authorise the occupation of Iraq in March 2003 and wanted international inspections to continue their search for weapons of mass destruction for some time. Today, this criticised position seems increasingly justified. How would the world have looked upon the Council today if it had authorised a war to eradicate weapons of mass destruction, which did not exist?

In other cases, dissatisfaction with lack of action or with little or late action may be justified. However, it is risky to generalise. Many decisions on action are actually taken without much publicity. Not so long ago the Security Council very quickly and

without much discussion authorised an intervention in Haiti to restore order. Many ongoing peacekeeping operations are renewed through decisions of the Council.

The ability of the UN to act is much greater now than during the Cold War, when decisions were often prevented by East-West rivalry and Russian vetoes in the Security Council. In recent time we find that many vetoes are cast by the United States in matters relating to the Israel and the Middle East conflict.

An important positive feature in the work of the UN is that the General Assembly has often served well as the forum for the initiation of a number of global issues, sometimes as a global alarm clock. Let me give examples.

The Universal Declaration of Human Rights, which was adopted in the early days of the UN, was timely but not an alarm clock. It was an international reaction against the holocaust and the atrocities in the Second World War and it became the starting point for a large body of declarations, legally binding conventions and mechanisms for supervision in the field of human rights. It rightly supplemented the organisation's attention to the security of states with a spotlight on human security. One might say that this body of rules on human rights is gradually acquiring the status of *common global standards*, not belonging to Christians, Muslims, Buddhist or any other ethic, but to all. The globalisation of the world economy has thus a parallel in a nascent *globalisation of ethics*.

We know that the standards are violated in the most horrendous manner in many countries, but we also know that they are important in the political and judicial struggle for more humane societies.

International criminal law took a leap forward through the statute of the Nuremberg Tribunal and the trials and the UN has continued the development with special tribunals and, more recently, with the International Criminal Court. Again, the spotlight is not just on the states but on the responsibility of the individual. This is a momentous development.

Secretary-General Kofi Annan devoted his opening speech in the General Assembly this year to the vital importance of the rule of law within states and between states. The UN has, in fact, achieved a great deal in advancing the role and relevance of law. The codification and development of international law was initiated early by the Assembly and has been a slow and un-

dramatic but singularly successful endeavour with the International Law Commission as a distinguished work horse. Another area in which drastic change and innovation has been initiated and brought about through the action of the United Nations is the law of the sea, where important new conventions and even a special tribunal now are operative.

6. Areas of Mixed Results and Problematic Areas

If the areas I have mentioned represent success stories for the community of states solving challenging problems using the instrument of the United Nations it is not difficult to find areas in which the results are mixed or failures.

Much is not heard nowadays about what in the 1970s even had an acronym of its own: the NIEO – the New International Economic Order. It was the time when the target for ODA, or Official Development Assistance, was set at 0.7% of the gross domestic product of industrialised states – a target regrettably not much respected.

A major difficulty for the UN to have a direct impact in economic and industrial development was – and is – that the big money for assistance and investment is not moved through the UN but provided by individual governments or the World Bank and the regional development bank. There is a simple reason for this: in the UN there is a strong majority of developing countries, each with one vote. In the banks weighted voting give donor countries control.

The power over vital economic and financial matters, like terms of trade and tariffs also lie outside the UN proper: in institutions like the International Monetary Fund, the World Trade Organisation and its predecessor, GATT.

The debates at the UN were loud but the impact on the ground was modest. It may nevertheless be said that thanks to the debates in the global UN forum the North/South economic issue attracted an attention that it would hardly have received anywhere else. Some of the justified grievances have slowly been remedied and, as testified by figures, development has been very brisk in many – but by no means all – developing countries. GDP *per capita* has gone up, life expectancy has gone up and birth rates have gone down.

In addition to being a question of *global human equity* the gap between the North and the South has serious security aspects. At the end of September 2004 the Head of the World Bank, James Wolfensohn, wrote that «the lack of economic opportunity, and the resulting competition for resources, lies at the root of most conflicts over the last 30 years, more than ethnic, political and ideological issues». And further: «Stronger support globally for the fight against poverty is the best investment that can be made in building a more peaceful world and a safer future for our children». On the issue of the global environment the intergovernmental work initiated in the UN General Assembly did serve as an alarm clock. The question is whether governments have been sufficiently woken up. There is both hope and disappointment. Important agreements, actions, conferences have taken place and institutions have been created. However, the urgency which scientists report on the problems of global warming, depletion of fisheries and water resources, to take some examples, is not met by urgent and decisive measures by governments acting jointly through the UN system.

7. The UN and the Use of Force

The most problematic areas of action in the UN are those involving the prevention or authorisation of the use of armed force.

I shall begin, however, with one area in which the organisation has been very successful and innovative: peacekeeping operations. This institution had developed without there being a word about it in the Charter, showing that like most constitutions it is a living instrument, allowing responses to challenges not foreseen.

The practice which has developed is sometimes called Chapter 6 and a half. Last year it was reported that there were some 15 ongoing UN led peacekeeping missions with some 50.000 soldiers and police personnel wearing UN blue helmets. The bill was about \$ 4 billion/year – still less than 1% of what the United States spent on defense the year before the Iraq war. Peacekeeping is not cheap, but it is a bargain compared to war... In other areas touching the use of force the achievements of the UN are a mixture of successes, failures and much in between, e.g.

- Security Council initiated co-operation on measures to prevent terrorism has developed rather well;
- The Gulf War in Iraq in 1991, authorised by the Security Council, was a success, liberating Kuwait after Iraq's aggression. The war in Iraq in 2003 ignored the will of the majority of the Security Council, relied on faulty national intelligence and ignored the results of international inspections. The most powerful member of the UN asserted that it felt free to take armed action against any «growing threat» – far beyond the bounds of Article 51 in the Charter, which recognises a right to self-defense against armed attacks.
- Economic sanctions have proved effective in several cases and are preferable to war but they often hit the civilian populations hard;
- In disarmament there have been significant results but despite continued détente between the great powers the outlook is at present at an all time low.
- The risks posed by weapons of mass destruction are presently rightly devoted much attention but we are not likely to succeed in reducing the risk of a further spread of such weapons unless the great powers join a march away from them.
- Decisive measures – including if need be armed actions – against genocide, as in Rwanda and Sudan, and other humanitarian disasters seem still to be out of reach.

It is doubtful whether any formal modifications in the provisions of the Charter could be agreed upon and would, in reality, remove the shortcomings.

The chances are better that the attitudes of the world community of people, now wired together by electronic communications, will gradually influence governments and make them move further to the rule of law, make them return to more disarmament, more effective measures against the environmental threats which threaten the regions and the world, better protection of the individual human being, including women, and greater economic and social equity between the different parts and regions of the world.

These endeavours must be based on facts, not fiction, on real reality, not virtual reality. The universities are uniquely well placed to help.

Critical thinking, search for truth and good will are needed.