

Informal Meetings of Legal Advisers of Ministries of Foreign Affairs

25TH LEGAL ADVISERS MEETING

Celebrating the 25th anniversary of the informal meetings of Legal Advisers of Ministries of Foreign Affairs held in the margin of the meetings of the Sixth Committee of the United Nations General Assembly

Remarks

by

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(This document is available with active hyperlinks under “Selected Material” and “Legal Adviser” at www.havc.se.)

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Dear Colleagues,

It is a great pleasure to be with you today, together with my three successive successors as UN Legal Counsel, and to address you on this occasion. Having retired from public service, I am doing so in my personal capacity.

Reflecting on how to use the few minutes at my disposal, I decided to focus on three items:

- The genesis of the Legal Advisers meetings;
- The items that I would put on the agenda of the Legal Advisers meeting this year;
- The need for the rule of law at the national and international levels.

The genesis of the Legal Advisers meetings

When I joined the Ministry for Foreign Affairs in Sweden in 1984, I had served in the judiciary for 10 years and in the Ministry of Justice for 13 years, the last three years as the Ministry's Chief Legal Adviser. I was therefore accustomed to contacts with colleagues in similar positions in other European states.

In the Ministry for Foreign Affairs I learned that there was a Council of Europe Committee of Legal Advisers on Public International Law ([CAHDI](#)), designed as a forum where the Legal Advisers of the Foreign Ministries of the members of the Council could meet and discuss matters of common interest.¹ The possibility of coordinating positions in matters on the agenda of the General Assembly of the United Nations was a constant item.

When I represented my country in the Sixth Committee of the UN General Assembly for the first time in the autumn of 1985, I had expected to meet with my opposite numbers from many countries. But this did not happen. And the debate in the Sixth Committee on the report of the International Law Commission (ILC) was not the policy discussion that I had expected.

In the coming years I got very frustrated over this lack of coordination. Eventually I contacted my colleagues in Canada, India, Mexico and Poland and suggested that we should make an attempt to coordinate the attendance of the Legal Advisers from the Foreign Ministries at the meetings of the Sixth Committee.² And so we did in a letter of invitation in June 1990.

To make a long story short – the response to our letter was very positive and on 29 October 1990 I had the privilege of making the opening statement on behalf of the five of us at the first legal advisers meeting. These meetings were to coincide with the discussion of the item “Report of the International Law Commission” in the Sixth Committee. It was no accident that in 1989 the General Assembly had decided to include for the first time in its resolution on the ILC report the date for this event: 29 October 1990.³ I am glad to see that this system is still in operation.

All this meant that we could have more of a policy discussion on the ILC report in the Sixth Committee, often with members of the Commission present. And, most importantly, we

¹ See <http://www.coe.int/web/cahdi>.

² Edward G. Lee (Canada), Prakash Shah, soon to be succeeded by P.S. Rao (India), Alberto Szekely (Mexico), and Janusz Mickiewicz (Poland).

³ See A/RES/44/35, para, 8, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/44/35.

could have very useful and frank discussions in two informal meetings – Monday afternoon and Tuesday afternoon – in the week when the ILC item was discussed in the Committee.

The first informal meetings were focused on the role of the Legal Adviser. These discussions are reflected in reports from the discussions. I refer to the list of literature available on the Legal Counsel's website.⁴

Let me share with you two conclusions from these meetings.

First, the Legal Adviser of a Ministry or an Organization must have direct access to the Minister or the Head of the Organization. Otherwise, the Adviser cannot fulfil his or her functions.

Second, the Legal Adviser should be present when important matters are discussed at the highest level. This does not necessarily mean that he or she should express opinions unless legal matters arise. However, it is to the benefit of the work if there is someone present with a “legal ear” who can caution if legal issues emerge in the matter under deliberation.

The items that I would put on the agenda of the Legal Advisers meeting this year

With respect to the question which items that I would put on the agenda of the informal discussions among the Legal Advisers this year, let me suggest: (1) the role of the Legal Adviser in relation to the performance of the Security Council; (2) the threat to peace and security generated by the population issue in combination with climate change, and (3) the need for a convention on crimes against humanity.

With respect to the first question – the performance of the Security Council – I am following with greater and greater concern the inability of the members of the Council to join hands when it is really needed.⁵ In addition, members of the Council, even permanent members, sometimes flagrantly violate the UN Charter when they believe that it is in their interest. What happened in Ukraine is a tragedy. Such things should simply not happen in the 21st century! At the same time, I must reiterate what I have said in another context: the West should have treated Russia with greater respect when the Berlin Wall came down.⁶ We should also not forget the attacks on Iraq in 2003 and Georgia in 2008.

From a legal point of view it is simply not acceptable that the UN Charter is violated in this manner by those who are mandated to supervise its implementation. The work of the Council should focus on *conflict prevention*. What is happening now, in particular in the Middle East, is in my view the effects of the inability of the members of the Council to join hands when it is obvious that they should do so.

With respect to the second question – the threat to peace and security generated by the population issue in combination with climate change – I refer to the *High-Level Meeting of*

⁴ See http://legal.un.org/ola/role_legal_advisor.aspx.

⁵ Reforming the United Nations Security Council. Keynote Address at Conference Henri Lafontaine, a joint initiative of Uppsala University and Wallonie Bruxelles International, held at Uppsala, Sweden on 11 December 2013 available at <http://www.havc.se/res/SelectedMaterial/20131211corellonscreform.pdf>.

⁶ See pages 4-5 at

<http://www.havc.se/res/SelectedMaterial/20140626thearcticgeopoliticalsituation.pdf>.

Experts on Global Issues and Their Impact on the Future of Human Rights and International Criminal Justice, which took place in Siracusa, Italy, on 3-7 September 2014.⁷ The meeting gathered 93 leading experts from 32 countries, participating in their personal capacities.

In the meeting threats arising from overexploitation of resources and profound and rapid changes in environmental and climatic conditions coupled with demographic increases in different parts of the world were discussed. After the meeting Cherif Bassiouni, Martin Lees and I sent a letter and some additional material to the members of the Security Council.⁸ The three of us concluded that the issues discussed in the meeting will most likely increase threats to peace and security. The combined impact of global factors is making our world community increasingly more vulnerable to a variety of human and natural disasters that need to be addressed before they occur.

We also pointed to the risk that the number of failed and failing states will increase and suggested that the Security Council should take into account these existing as well as emerging factors and consider establishing an overall strategic study group to monitor, analyze and anticipate these developments so that the Council will be better prepared in the future to face the different crises that will arise out of the factors mentioned and their consequences.

I would in this context also recommend that you study a report by a task force within the International Bar Association that was discussed in Tokyo last week: *Achieving Justice and Human Rights in an Era of Climate Disruption*.⁹

With respect to the third question – the need for a convention on crimes against humanity – I am sure that all of you know that this matter is now on the agenda of the ILC and that Sean Murphy has been appointed Special Rapporteur. As Legal Advisers you have a special responsibility to inform those in charge at the political level in your countries about this item and that it is important that they can make an informed decision on the subject matter. Of course, as a member of the [Crimes Against Humanity Initiative](#) I hope that the Sixth Committee will support this work and encourage the ILC to produce a draft convention that could be adopted by the General Assembly.¹⁰

The need for the rule of law at the national and international levels

Finally, my third and last element: the need for the rule of law at the national and international levels. Much could be said about this topic and the prominent role that it has gained in the UN in later years. Time does not allow that I go into detail here. Let me instead draw your

⁷ See <http://www.isisc.org/dms/index.php?limitstart=6>.

⁸ M. Cherif Bassiouni, President, International Institute of Higher Studies in Criminal Sciences (ISISC); Emeritus Professor of Law, DePaul University; Honorary President, International Association of Penal Law (AIDP).

Martin Lees, Vice Chairman, Conference on Affordable World Security; Former Secretary General of the Club of Rome; Former Assistant Secretary General for Environmental Affairs.

The letter is available at

http://www.isisc.org/dms/index.php?option=com_k2&view=item&id=212:letter-on-global-issues-to-the-security-council&Itemid=222.

⁹ See <http://www.ibanet.org/PresidentialTaskForceClimateChangeJustice2014Report.aspx>.

¹⁰ See <http://law.wustl.edu/harris/crimesagainsthumanity/>.

attention to the following two tools that should be of great assistance when you engage in this work – a work which will never be finished but must be a perpetual process in all societies.

The first tool is the [Rule of Law Index](#), produced by the World Justice Project.¹¹

This Index measures how the rule of law is experienced in everyday life in 99 countries around the globe, based on over 100,000 household and 2,400 expert surveys worldwide. It is the most comprehensive index of its kind and the only one to rely solely on primary data.¹²

The second tool is [Rule of Law – A guide for politicians](#), now available in 17 languages.¹³ It is only some 40 pages that are freely accessible for downloading and printing from the web.

Please make sure that the members of your government and legislative assembly are aware of these very practical tools.

I wish you all the best in your important work!

¹¹ See <http://www.worldjusticeproject.org/rule-of-law-index/>.

¹² The Index is also referred to in para. 42 in the report of the Secretary-General to the Security Council of 11 June 2013 “Measuring the effectiveness of the support provided by the United Nations system for the promotion of the rule of law in conflict and post-conflict situations”, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N13/359/80/PDF/N1335980.pdf?OpenElement>.

¹³ See <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>.