

**Union of the Iranian Bar Associations (UIBA)
and
International Bar Association (IBA)**

**The Independence of the Legal Profession and Bar Associations:
International Perspectives**

*The function of Bar Associations to promote the rule of law – defending the
rights of lawyers, educating the public about the rule of law*

**Address by
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Mr Bahman Keshavarz, President of the Union of the Iranian Bar Associations,

Dr Reza Yazdi, Head of the International Affairs Commission and Executive Secretary of the Conference,

Representatives of the Austrian, French, German, The Netherlands and Turkish Bar Associations,

Excellencies,

Distinguished participants,

First of all, thank you very much for inviting me to address you on this occasion together with Margery Nicoll and Phillip Tahmindjis, colleagues from the International Bar Association.

Your invitation brought to mind my previous visits to Iran and my contacts with colleagues in your country over a period of many years. My first visit to Iran was to Tehran and Esfahan in November 1990. I was the Legal Adviser in the Ministry for Foreign Affairs in Sweden and was sent by my government to discuss human rights with high officials in Iran. I met with the Minister for Foreign Affairs, Ali Akbar Velayati, and the Legal Adviser of the Ministry, Mir Mehdi and others. On that occasion I also had a very interesting dialogue with Ayatollah Jaafari. I will revert to this in a few moments.

In May 1997, I visited Iran in my capacity as Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations. This was in connection with the yearly session of the Asian African Legal Consultative Committee.¹ At that time Asghar Dastmalchi was its Assistant Secretary-General. On that occasion, I also had the opportunity of visiting the holy city of Qom and its famous library. In the past, I have also as a result of my UN function interacted with other internationally renowned Iranian lawyers, among them Javad Zarif, your present Minister for Foreign Affairs, and Djamshid Momtaz, long-time member of the International Law Commission.

I thought it appropriate to mention these connections as a general background to my address.

The topic that I have been asked to address is: *The function of Bar Associations to promote the rule of law – defending the rights of lawyers, educating the public about the rule of law.* My presentation will be in four main parts:

- the definition of the rule of law;
- the rules that apply;
- educational material; and
- the future.

Needless to say, given the time at my disposal it can only be a fairly short overview.

¹ Now called the Asian African Legal Consultative Organisation (AALCO), see <http://www.aalco.int/Scripts/default.asp>.

The definition of the rule of law

With respect to the definition of the rule of law I am sure that you are well aware that there are many attempts to define it. Of particular importance in this context is to keep in mind that the members of the United Nations have come to an understanding that the rule of law is an indispensable prerequisite for international peace and security. I refer here in particular to a resolution adopted by the UN General Assembly on 24 September 2012: *Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels*.² Let me quote the following two paragraphs in this resolution:

1. We reaffirm our solemn commitment to the purposes and principles of the Charter of the United Nations, international law and justice, and to an international order based on the rule of law, which are indispensable foundations for a more peaceful, prosperous and just world.

5. We reaffirm that human rights, the rule of law and democracy are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations.

With respect to the definition of the rule of law, reference could be made to the one that appears in Secretary-General Kofi Annan's report to the General Assembly in 2004, entitled *The rule of law and transitional justice in conflict and post-conflict societies*:

The rule of law - - - refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.³

For my part, I have a very straightforward and brief definition, consisting of four elements: (1) democracy; (2) proper legislation respecting international human rights standards; (3) the institutions to administer this law, including independent and impartial courts; and (4) the individuals with the integrity and the knowledge to administer these institutions.

There is a special interdependence between the two first elements. Many countries are not yet democracies. It is, however, necessary to develop a legal order through legislation also in those countries. At the same time, to be fully legitimate, legislation has to be adopted by a national assembly that is elected in free and fair elections. And such can only be held in democratic societies. This means that there will be a fairly long transitional period in many countries before the two first conditions for the rule of law are met.

² UN Doc. A/RES/47/1*, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/1.

³ Paragraph 6 in UN Doc. S/2004/616*, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616.

The third element, the institutions, including independent and impartial courts, is an obvious component. However, in my view, the real challenge lies in the fourth element: the individuals with the integrity and the knowledge necessary to administer these institutions.

And this is where I see an important role for national bar associations. They have a critical role to play when it comes to education, including the ethical elements that are of particular importance in the legal profession. Many countries are plagued with corruption. And let me say very clearly: corruption – this unethical and criminal activity – is the worst enemy of the rule of law.⁴ The question that always comes to my mind here is: Those who engage in corruption – are they completely devoid of self-respect?

In conclusion, with regard to the definition of the rule of law, let me say that a free and independent bar is an indispensable component in a society under the rule of law.

The rules that apply

In order to be able to educate it is important to be aware of the rules that apply – in particular rules developed at the international level. In this context it is necessary to focus on the basic rules.

Let me start by referring to the Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations on 10 December 1948.⁵ In my view, this declaration has now acquired the status of customary international law. In other words: it is binding on all states.

This is where I recall my dialogue with Ayatollah Jaafari, which took place here in Tehran on 27 November 1990. He was one of the authors of the Cairo Declaration on Human Rights in Islam, adopted in August the same year.⁶ I asked him why he and others had engaged in this activity when we already had a universal declaration. His reply was that the UDHR was a Western invention and that it was necessary to develop a similar declaration for Moslem countries. I reminded him that the UDHR was elaborated by the United Nations Commission on Human Rights and that there were prominent representatives from all over the world on the Commission, including from Iran and other Moslem countries. And when the declaration was adopted by the General Assembly, no Moslem country voted against the declaration. All voted in favour except Saudi Arabia that abstained.

Then I asked Ayatollah Jaafari for his opinion about the 109th Sura that had caught my attention reading The Holy Quran. It is entitled “The Unbelievers”:

SAY: ‘Unbelievers, I do not serve what you worship, nor do you serve what I worship. I shall never serve what you worship, nor will you ever serve what I worship. You will have your own religion, and I have mine.’

⁴ Reference is made to An Appeal to Judges Worldwide by the Legal Counsel made at the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, held in Merida, Mexico, 9 December 2003, available at http://www.un.org/law/counsel/english/corruption_appeal.pdf.

⁵ Now available in more than 440 translations. See <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>.

⁶ See <http://www.oic-oci.org/english/article/human.htm>.

When I asked the Ayatollah how this should be interpreted he was very clear: it is an expression of *respect* for other religions. Later, this interpretation has been confirmed to me by other prominent Moslem scholars. Against this background it is important that we all defend the integrity and the universality of the UDHR. This is also how one must understand *The Islamic Republic of Iran's Pledges and Commitments on Human Rights* dated 8 May 2006 and delivered to the UN General Assembly.⁷ It would be a great mistake if followers of different religions start developing independent declarations based on their own belief. We have to rely on principles that enjoy universal consensus, rather than principles in which some alone believe.

The UDHR was the first step in this field within the United Nations. In 1966, the declaration was followed by the two covenants: the International Covenant on Economic, Social and Cultural Rights⁸ and the International Covenant on Civil and Political Rights.⁹ Iran is party to both.¹⁰ As you are aware, the covenants have now been followed by many other conventions in the field of human rights, including at the regional level.

With respect to Iran a determining factor when it comes to the rule of law and the protection of human rights is that Iran is a party to the two covenants and a number of other human rights treaties, e.g. the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973); the Convention on the Rights of the Child (1989); and the Convention on the Rights of Persons with Disabilities (2006). As a party to these treaties, Iran is under an obligation to ascertain that its national legislation is in conformity with the legal obligations contained therein. This actually requires a methodical approach both in the legislative work, and in applying the law at the national level, be it within the administration or in the judiciary.

By way of example, let me mention that when I was head of the Legal Department in the Swedish Ministry for Foreign Affairs, I had an officer vetting all government proposals for legislation with “human rights spectacles” before they were passed on to Parliament. I applied the same method in the UN Office of Legal Affairs with respect to drafts of UN regulations to be issued in Kosovo and East Timor when the UN governed those provinces. I mention this just to give an example of the kind of methods one can use in order to ascertain that national legislation does not violate international human rights standards.

I would now also like to focus on documents containing basic principles that are of particular importance in this context and how this material can be used in defending the rights of lawyers and in educational efforts.

⁷ See note from the Permanent Mission of the Islamic Republic of Iran to the United Nations, containing voluntary pledges and commitments in accordance with General Assembly resolution 60/251 of 15 March 2005, entitled “Human Rights Council”, available at <http://www.un.org/ga/60/elect/hrc/iran.pdf>.

⁸ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁹ See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁰ The Islamic Republic of Iran signed the covenants on 4 April 1968 and ratified them on 24 June 1975. See <https://treaties.un.org/pages/ParticipationStatus.aspx> under Chapter IV items 3 and 4.

The first is the *United Nations Basic Principles on the Independence of the Judiciary* from 1985.¹¹ According to their wording, these basic principles should “be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general.” A fundamental element among the principles is that “the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”.¹²

The second document is the *United Nations Basic Principles on the Role of Lawyers*.¹³ In this document it is emphasised that “professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest”.

I would also like to highlight the following paragraphs in the document since they are especially relevant to Iran in these days:

4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

In these basic principles there is also a reference to a third document that should be mentioned in this context, namely the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.¹⁴ In this declaration it is said, among other things, that the responsiveness of judicial and administrative processes to the needs of victims should be facilitated by “providing proper assistance to victims throughout the legal process”. The following paragraph is also of particular interest here:

¹¹ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

¹² Paragraph 2.

¹³ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

¹⁴ Adopted by General Assembly resolution 40/34 of 29 November 1985, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.aspx>.

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights. (my emphasis)

A fourth document that should be borne in mind in this context is the *United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.¹⁵ Reference is made here in particular to Principles 11, 17 and 18 relating to the right of a person detained to be assisted by counsel and to communicate and consult with his or her legal counsel.

I would be remiss if in this context I did not also mention the 2002 *Bangalore Principles of Judicial Conduct*.¹⁶ This document contains principles relating to six values and explains how these principles should be applied. The six values are: independence; impartiality; integrity; propriety; equality; and competence and diligence. In the preamble of this document it is noted among other things that a competent, independent and impartial judiciary is essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law. It is also said (section 6.4) that a judge "shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms".

One area which one should always keep in mind in addressing the rule of law and its core element human rights is empowerment of women. I realise that this may be a sensitive issue in some countries. Looking at the Convention on the Elimination of All Forms of Discrimination against Women from 1979, I noted that it has now 189 parties. Compare with the UN which is currently made up of 193 Member States. Regretfully, Iran is not a party to this treaty. However, in *The Islamic Republic of Iran's Pledges and Commitments on Human Rights* dated 8 May 2006 that I just referred to, it is said that Iran is considering accession to this convention and two other treaties.¹⁷ May I suggest that this is something that the Bar Association, which is also referred to in this document, should take a look at.

In my view, empowerment of women is one of the most important issues for the future. And I never fail to mention this.¹⁸ It is obvious that in a modern world women must be allowed to participate in governance (note in this context Article 21 of the UDHR) as well as in family planning. This should be in the interest of all states. And since there is a direct correlation between the standing of the women in a society and the level of development in that society, states that are lagging behind in this respect will suffer in the long time perspective.

¹⁵ Adopted by General Assembly resolution 43/173 of 9 December 1988, available at <http://www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf>.

¹⁶ The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, 25-26 November 2002, available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

¹⁷ See note 7.

¹⁸ Reference is made to my address on 8 March 2012 at a celebration of International Women's Day in Stockholm on the theme: *Women in North Africa – The Arab Spring: Women in democracy processes*, available at <http://www.havc.se/res/SelectedMaterial/20120308internationalwomensday.pdf>.

Educational material

Let us now look at the educational material. For educational purposes I would like to refer not only to the material that I have just mentioned, but also to the publications and resources that are available on the website of the Office of the UN High Commissioner for Human Rights.¹⁹

It is obvious that this material can be used also when members of bar associations engage in educating the general public about the rule of law. Needless to say, in this effort bar associations should also connect with the central educational authorities in their countries in order to discuss how the educational material used at different levels in schools should be elaborated.

In addition, I do not know to what extent the material that I have referred to is available in Farsi. I take it for granted that the treaties are translated. But what about the principles? If they are not available in Farsi, the Bar Association might be in a position to translate them and make them available in a booklet that could also be published on the web.

Let me now focus on specific tools that are very useful in educating different audiences about the rule of law. The first is the World Rule of Law Index developed by the World Justice Project. You have received the link to this index in advance.²⁰ My advice is to use this index, including the spider diagrams, to see where the need for reform and improvement is the greatest. This work is a continuum. In a sense it will never be finished since it has to reflect the situation in contemporary society.

An obvious tool to use is the information available on the website of the UN High Commissioner for Human Rights (OHCHR), in particular the information available under “Human Rights by Country”.²¹

Another obvious source of information is Transparency International and their Country Profiles.²²

With respect to the role of bar associations in educating society about the rule of law there is one category that should be borne in mind in particular, namely politicians. This applies to politicians at all levels, but there should be a special focus on those in government and in the national legislative assembly. A person who drew attention to this was the former Chancellor Helmut Schmidt of Germany. In a meeting of the InterAction Council of Former Heads of State and Government in 2008 he questioned whether politicians really understand their responsibility for establishing the rule of law. To make a long story short, this prompted the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden and the Hague Institute for Internationalisation of Law (HiiL) in the Netherlands to elaborate a short guide – not more than some 40 pages – on the subject matter entitled *Rule of Law – A guide for politicians*.

¹⁹ See <http://www.ohchr.org/EN/PublicationsResources/Pages/Publications.aspx>.

²⁰ This material can be found at <http://worldjusticeproject.org/rule-of-law-index> and <http://worldjusticeproject.org/rule-law-around-world> and <http://data.worldjusticeproject.org/#grid>.

²¹ See <http://www.ohchr.org/EN/Pages/WelcomePage.aspx> and <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/IRIndex.aspx>.

²² See <http://www.transparency.org/> and <http://www.transparency.org/country#IRN>.

This guide is now available free of charge in 20 languages for downloading and printing from the web. You have already been provided with a link to this guide, including the translation into Farsi.²³ This translation was made possible through contacts provided by Professor Said Mahmaoudi. It gives me great pleasure to recognise his presence at our conference. It is my hope that you will use this guide in your educational efforts. As suggested in the Foreword to the guide, it should also be useful to other decision-makers and policy-makers and to journalists and others who need to orient themselves in the topic.

Finally, with respect to the Bar Associations themselves, I would like to once again draw your attention to the material that Margery Nicoll referred to in her intervention earlier today.²⁴

The future

Finally, let us look very briefly to the future. In so doing, it is often wise to apply a historical perspective. When, in 1997, I visited the holy city of Qom and the famous library with scripts from way back, I was told that there were also scripts from the famous Persian poet Omar Khayyám. I very much enjoy reading his poetry – in particular Rubáiyát, written almost thousand years ago. Among the poems in Rubáiyát is one where Omar Khayyám reminds us that the world – symbolized by a battered caravanserai – is being ruled by one master after another. And each time a ruler “goes his way”, the caravanserai is left still more battered. In Edward Fitzgerald's translation the poem reads:

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.

This is precisely how one could see the world. Rulers come and rulers go. And every time, the world is left a little more battered. This behaviour cannot be allowed to continue. We need statesmen and women who are able to govern the world more wisely, in particular since we now also have additional threats generated by a growing world population and climate change.

The growth of the world population is exponential. We were some 2 billion when the UN was established in 1945. We are now more than 7 billion, and, according to the UN Population Division, we will be 9.6 billion by mid-century.

With respect to climate change we are now looking to the summit meeting in the United Nations in September and the United Nations Climate Change Conference, COP21, in Paris in November-December. I am sure that you have seen the draft of the 17 Sustainable Development Goals to be adopted in New York in September.²⁵ In my view, one of these goals is necessary to attain all the other goals. I refer to Goal 16:

²³ Reference is made to <http://books.rwi.lu.se/index.php/publications/catalog/book/4> and <http://books.rwi.lu.se/index.php/publications/catalog/view/4/3/197-1>. If there are problems with the links, please go to <http://books.rwi.lu.se/index.php/publications/catalog> and then “Browse 30 Titles”.

²⁴ The material that the Chair of the IBA Bar Issues Commission Margery Nicoll referred to is the “Programme for Excellence” available at http://www.ibanet.org/barassociations/BIC_resources.aspx.

²⁵ See http://www.un.org/ga/search/view_doc.asp?symbol=A/68/970&Lang=E.

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

Among the targets of this goal are “promote the rule of law at the national and international levels”, and “substantially reduce corruption and bribery in all its forms”. These are absolutely crucial elements for creating the legal order that is a prerequisite for achieving all the other goals.

And this is where I see a very important role for lawyers. Irrespective of where we discharge our professional duties – be it in the bar; the judiciary; national, regional or local government; business; intergovernmental organisations; non-governmental organisations – we have an obligation to engage in establishing the rule of law and in explaining that the rule of law is an indispensable element in creating a world society where humans can live in peace and dignity with their human rights protected.

Thank you for your attention!