



INTERACTION COUNCIL

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Chairman's Report on the High-level Expert Group Meeting

**Restoring International Law:
Legal, Political and Human Dimensions**

Chaired by Ingvar Carlsson

**19 June 2008
Hotel Atlantic Kempinski
Hamburg, Germany**

Introduction

The challenges that humankind is now facing as a result of the global economic development, climate change and the growing world population are unprecedented. The need for a rule-based international society has never been greater.

It is equally clear that to settle differences among States in today's world by unilateral use of force would have disastrous effects, yes even threaten human survival on earth. Past experience shows that differences that occur among states simply must be resolved by peaceful means as prescribed by the Charter of the United Nations.

The need for a rule-based international society has been affirmed by the General Assembly of the United Nations in no uncertain terms. In the Summit Resolution (A/RES/601, para. 134) the member states of the Organisation reaffirmed their commitment to the purposes and principles of the UN Charter and international law and to an international order based on the rule of law and international law. Indeed, they clearly stated that such an order "is essential for peaceful coexistence and cooperation among states".

In this 2008 High-level Expert Group meeting held on 19 June 2008 in Hamburg, Germany, the InterAction Council asked how international law could be restored. Particular focus was given to the legal, political and human dimensions.

A. International law

International law has long been a foundation of state sovereignty just as state sovereignty is one of the fundamental elements of international law. It is expressly referred to among the principles of the Charter of the United Nations. The sovereign equality of all states is in a sense a precondition for world governance. However, the way in which international law has developed over the years has caused a basic shift in the way sovereignty has to be understood in contemporary society.

In essence, sovereignty must now be exercised in the interest not of a sovereign but of the citizens and those who reside in the territory of the sovereign state. This applies in particular to observance of human rights standards and the principles of a society under the rule of law.

The globalisation and increasing interdependence among states also means that sovereignty must be exercised by entering into binding legal obligations and often through membership in international organisations (sometimes referred to as "pooled sovereignty"). The Charter of the United Nations regulates when state sovereignty has to yield as a consequence of decisions by the Security Council in the interest of the maintenance of international peace and security.

Over the years, an increasingly comprehensive system of international norms has been developed that imposes binding legal obligations on a range of international actors. In addition, institutions and processes to monitor compliance and address violations of international legal obligations have been established. In many fields the system works well and is more or less taken for granted. In reality, states make great efforts to

comply with their international obligations.

Seen in this perspective there has been a very positive development towards a rules-based international society. In particular it should be noted that, contrary to what some suggest, the legitimacy of the UN Charter is actually consistently upheld in the rhetoric of all States and the behavior of most. This progress in the building and strengthening of international law and international legal institutions should be commended and supported.

However, in certain areas that are central to state sovereignty the situation is more problematic. In recent years, we have seen a tendency among powerful states to act on their own, disregarding their obligations laid down in the UN Charter and other relevant international law. In some quarters there has also been a trend towards an approach that classifies international law as a disposable tool of diplomacy, meaning that its system of rules is merely one of many considerations to be taken into account by governments when deciding what strategy is most likely to advance the national interest in the particular situation at hand. This development is dangerous and entails a serious risk that the world community will lapse back into the society where, ultimately, conflicts were resolved by unilateral use of force – in other words the kind of society that in the past caused major conflicts and human suffering. Such behaviour defeats the purposes and principles of the United Nations and puts the world at risk.

The UN Charter forbids the threat or use of force against the territorial integrity or political independence of any state unless force is used in self-defence or in accordance with a decision by the Security Council under Chapter VII of the Charter. It is of utmost importance that these rules are followed, in particular by the powerful states and foremost by the five permanent members of the Security Council. Experience, not least from later years, shows that this is indeed in their interest.

The commitment by the General Assembly to an international order, based on the rule of law and international law, referred to in the Introduction, is of great significance. It goes without saying that such an important affirmation simply must be honoured.

In this context, one of the most important principles of the UN Charter must be reaffirmed: that member states shall settle their disputes by peaceful means. Disputes among states are a natural consequence of human coexistence. The critical factor is not the disputes as such, but how the disputes are settled. It is sad to note that there are still governments in charge of great nations that do not seem to have learnt the lessons from the past: that differences must be settled through dialogue, negotiation and other peaceful means and not through unilateral acts, arrogance and the threat or use of force.

The process of establishing an international society under the rule of law starts at the national level. In order to live up to their commitments in the Summit Resolution all states should meticulously examine to what extent they are able to observe these commitments and also honestly assess if they actually do observe them.

To develop a system under the rule of law is a lengthy and complex process. Some states have been advantageous and have been able to work towards such a system over a long period of time. Others have been less fortunate, in many cases for the

simple reason that they only recently gained their independence. In cases where states need assistance, legal technical assistance should be offered.

With globalisation and increased interaction among states the international norms must be further developed. Increasingly, states must make commitments that, when entered into, bind the national legislators. This should not be seen as limiting state sovereignty but rather as an expression of state sovereignty. However, once such undertakings are made, they must be observed. Therefore, states must see to it that their constitutional systems do not prevent them from observing their obligations under international law.

At the same time, it is important that careful examination is made of the interrelationship between various international undertakings. The increasing number of international norms will require a coordination of a nature that should be applied in the legislative process at the national level in a state under the rule of law. If not, there is a risk that different international instruments might express contradictory obligations or lead states to make undertakings that are difficult to fulfil in a consistent manner.

There is today much talk about new actors in the field of international law. The engagement of the non-governmental organisations has a long tradition. Their engagement both at the national and international level is a necessary component in a democratic society.

However, gradually we have witnessed the involvement of other actors, in particular from the business community. This involvement, often demonstrating an engagement to strengthen human rights, should also be welcomed and supported.

B. Analysis of violations of international law in later years

Since real security for individuals, for groups, for nations and for the world in its entirety comes through adherence to law, at the domestic level and also at the international level, violations of the law must be viewed with utmost seriousness.

Consideration might therefore be given to identifying systematically individual and concrete violations of this kind committed in later years and recording them in a structured manner for educational purposes. However, a precondition for such a system to contribute to a positive development would be to secure statements or interpretations that make clear with sufficient authority that what has occurred actually is a violation of international law. Experience shows that such matters are highly political, and unless the issue has been settled by an authoritative international institution, like for example the International Court of Justice, the listing of such instances might not be helpful but would rather give rise to political controversies.

Therefore, such matters may best be left to the general political debate at the national level and in international forums. The Security Council has an obvious role in such situations in accordance with Chapters VI and VII of the UN Charter. But in order to act with authority the members of the Council must then themselves scrupulously abide by the Charter.

However, in this context it is important to put on record that several issues were raised in the High-level Expert Group meeting. Because of its long history and the damage that it has caused and causes to the respect for international norms, the conflict in the Middle East was discussed in particular. The violations of international law that have been committed over the years in this conflict can no longer be tolerated. If the Middle East conflict is not addressed with determination, applying the same standards to all, this will have serious consequences for the credibility of the international legal system. The present situation weakens respect for international law in general and provides an excuse for states, particularly in the developing world, to refuse to address violations of international law, especially human rights law, by other states.

It was also noted that recent violations of fundamental obligations in relation to the use of military force pose a particular challenge to global perceptions of the efficacy of international law. As previously referred to, the UN Charter permits military force only when authorised by the Security Council or where it is exercised in self-defence if an armed attack occurs or when the threat is imminent. Recent claims to a more expansive view, including assertion of a right to use military force to prevent even the possibility of a threatening situation developing on the basis of a subjective assessment by a particular state deciding to act entirely unilaterally, should be vigorously opposed.

At the same time it was noted that the state that has announced this policy, the United States of America, has been the most active and constructive contributor to the development of the present system for the maintenance of international peace and security, including in particular the development of the UN Charter, and that it deserves to be recognised for this.

It was also noted that the State community should have been able to act with more determination in other situations, for example those obtaining in Darfur, Zimbabwe and Myanmar.

Furthermore, it should be put on record that many states that have ratified treaties, for example in the fields of human rights and labour law, have not fulfilled their obligations to properly implement these treaties at the national level and therefore fall short of fulfilling their international obligations.

C. How can violations of international law be avoided in the future?

An important element in defining the best way to avoid violations of international law in the future is to focus on the long-time perspective. Thus, it is of essence that states define their interest not in a narrow and immediate approach to interest gratification but in a more strategic and circumspect manner.

World governance should be based on lessons learnt. Over the years an impressive body of international law has been developed. Based on the experiences of two world wars in the last century, the United Nations was established after World War II in order to “save succeeding generations from the scourge of war”. Its Charter was designed in a manner that it would supersede obligations based on other international agreements (Article 103).

The damage that some of the actions taken during the last few years has caused to the credibility of the system for collective security laid down in the UN Charter is serious. This system must be restored and upheld with greatest determination. This can only be accomplished with a firm commitment demonstrated in practice by the powerful states.

In more general terms the best way for states to promote justice and the rule of law would be to strictly adhere to the UN Charter and to work at the national level to enhance the rule of law. This is also a field where states can enter into a dialogue, and those who are in a position to assist should be prepared to provide those in need with assistance.

Another aspect is that the interrelationship among states must be based on equality. It should be understood that all human beings are entitled to strive for the same level of development. This involves questions of an ethical nature and requires that populations in developed countries are prepared to share and accept the consequences that will follow when others compete in order to develop.

One of the most serious threats to human security is terrorism. Therefore it is important that states cooperate in combating this scourge. But this is not a war. Terrorism should be treated as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law. This is indeed also foreseen by the General Assembly of the United Nations when it adopted its Global Counter-Terrorism Strategy (A/RES/60/288, Plan of action, section IV).

Another way of strengthening the international legal system would be for the parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) to actually fulfil their obligations under that treaty. This applies in particular to their obligations under Article VI to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control. They should therefore engage anew in constructive disarmament negotiations and on arms control.

In this context states should as an immediate step consider concluding a treaty prohibiting first use of weapons of mass destruction.

Another step that would be of great importance is if states would systematically review the extent to which they are parties to relevant international treaties and re-examine the reasons why they have not so far ratified or acceded to treaties to which they are not party.

The main obstacle to universal participation in some key treaties is most probably not that states are unwilling to ratify or accede to the treaty in question. Rather, the reason is that there is a lack of competence at the national level. In such situations, governments should not hesitate to ask for assistance from other states, international organisations or non-governmental organisations.

Of even greater importance would be if states, if necessary with assistance from relevant international organisations or others, engaged in examining to what extent

their legal system needs strengthening. Based on such assessment they should decide what legal technical assistance they might need and make the appropriate contacts with those who are in a position to deliver such assistance. International organisations and in particular the United Nations have an important role to play here.

The rule of law is something that has to be encompassed by people in general; it must be based on the popular understanding that the rule of law is necessary for good relations not only among individuals or between individuals and their government but also in relations among states.

A significant contribution to avoiding violations of international law in the future would be to devote resources to education of the basics of international law and the meaning of the rule of law at the national and international level. This education should start as early as possible and be developed as appropriate for all levels: different school levels, university and professional level. Particular attention should be given to educating judges and politicians. The media have an important role to play in making people aware of the necessity of a rule-based society.

Recent experiences also point to the need for members of the legal profession and in particular those who give advice in matters relating to international law to strictly observe the professional and ethical standards that are fundamental to their vocation. This should be respected by those who depend on their services.

Obviously, the non-governmental organisations should continue their activities in order to enhance respect for human rights and the rule of law. By also providing reasoned criticism and where possible technical assistance they should be able to assist states in a constructive manner.

Recommendations

The Chairman of the High-level Expert Group Meeting recommends the following:

- Accepting that the challenges that mankind is facing must be addressed through multilateral solutions within a rule-based international system.
- Supporting faithfully the United Nations and other international organisations of which they are members while at the same time ascertaining the transparency and accountability of those organisations.
- Observing scrupulously their obligations under international law, in particular the Charter of the United Nations. The great powers must set the example by working within the law and abiding by it, realising that this is also in their interest.
- Accepting that the Charter of the United Nations does not allow pre-emptive use of force.
- Adhering to their commitment to settle international disputes by peaceful means and accepting the compulsory jurisdiction of the International Court of Justice.

- Realising that it is necessary for states to engage in discussions also with those with whom they have controversies in order to explore the possibility of resolving the difference.
- Acting with authority and consequence in situations where it is necessary for the Security Council to exercise the responsibility to protect as defined in the General Assembly's Summit Resolution (A/RES/60/1, para. 139).
- Paying particular attention to the observance of human rights and fundamental freedoms. If this is not already the case, these standards should be manifested in the constitution through a Bill of Rights.
- Accepting as legitimate reasoned criticism by international organs, including the Secretary-General of the United Nations, and non-governmental organisations of their human rights performance, engaging in a serious analysis of such criticism and, if required, taking the necessary steps to remedy the causes for the criticism.
- Treating terrorism as criminal acts to be handled through existing systems of law enforcement and with full respect for human rights and the rule of law.
- Fulfilling their obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), in particular their obligations under Article VI of the treaty, and engaging anew in constructive disarmament negotiations and arms control.
- Considering to conclude a treaty prohibiting first use of weapons of mass destruction.
- Reviewing the extent to which they are parties to relevant international treaties and re-examining the reasons why they have not so far ratified or acceded to treaties to which they are not party.
- Examining to what extent their legal system needs strengthening and deciding for themselves what legal technical assistance they might need and making the appropriate contacts with the United Nations or other organisations – governmental as well as non-governmental – that are in a position to deliver such assistance.
- Devoting resources to education at all levels, including by engaging the media, of the basics of international law and the meaning of the rule of law at the national and international level. Particular attention should be given to educating judges and politicians.
- Respecting that members of the legal profession and in particular those who give advice in matters relating to international law have an obligation to strictly observe the professional and ethical standards that are fundamental to their vocation.

**High-Level Expert Group Meeting
List of Participants**

**Restoring International Law: Legal, Political and Human
Dimensions**

19 June 2008

Hotel Atlantic Kempinski, Hamburg, Germany

List of Participants

InterAction Council Members

1. H. E. Mr. Helmut **Schmidt**, Honorary Chairman (Former Chancellor of Germany)
2. H. E. Mr. Malcolm **Fraser**, Honorary Chairman (Former Prime Minister of Australia)
3. H. E. Mr. Ingvar **Carlsson**, Chairman (Former Prime Minister of Sweden)
4. H. E. Mr. Jean **Chrétien** (Former Prime Minister of Canada)
5. H. E. Mr. Olusegun **Obasanjo** (Former President of Nigeria)

Associate Members

6. Baroness **Jay**, Chairperson of the Overseas Development Institute, London (U.K.)
7. Mr. Seiken **Sugiura** (Former Justice Minister of Japan)

High-level Experts

8. Prof. José E. **Alvarez**, President of American Society of International Law (USA)
9. Prof. Nisuke **Ando**, Professor of International Law, Faculty of Law, Doshisha University (Japan)
10. H. E. Dr. Hans **Corell**, Ambassador, Former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations (Sweden)
11. Prof. Dr. John **Dugard**, Chair in Public Int'l Law of University of Leiden (South Africa)
12. Prof. Thomas M. **Franck**, Murry & Ida Pecker Professor of Law Emeritus, New York University of Law (USA, by telephone conference)
13. Mr. Nagao **Hyodo** (Former Japanese Ambassador to Belgium)
14. Prof. Dr. Doris **König**, Bucerius Law School (Germany)
15. Dr. Benjamin Bewa-nyog **Kunbuor**, Lecturer in the Ghana School of Law and Researcher (Ghana)
16. Prof. Timothy L.H. **McCormack**, Professor of International Humanitarian Law, University of Melbourne Law School (Australia)
17. Prof. Brigitte **Stern**, Professeur à l'Université Paris 1 – Panthéon-Sorbonne (France)
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Terms of Reference

High-level expert group meeting

Restoring International Law: Legal, Political and Human Dimensions

19 June 2008

Hotel Atlantic Kempinski, Hamburg, Germany

Chaired by: Ingvar Carlsson (Former Prime Minister of Sweden)

A. International law

Over time, international law has come to cover ever wider areas. The development over the last 50-60 years is without precedent. This development gives rise to a number of questions that need to be analysed.

State sovereignty and multilateralism are questions that are subject of intense debate.

- How is State sovereignty, one of the fundamental principles in the Charter of the United Nations, to be understood today against the general message of the Charter and the development of international law – in particular human rights law and humanitarian law?
- Are there changes in the perception of the usefulness of multilateral solutions to common problems in later years?

Democracy and the rule of law are often referred to in the debate. The General Assembly of the United Nations has made clear commitments to the rule of law at the national and international level. In particular, in the Summit Resolution the Member States of the United Nations recommitted themselves to actively protect and promote all human rights, the rule of law and democracy.¹

On 22 June 2006, the Security Council held a day-long open debate on the Council's unique role in promoting and strengthening the rule of law in international affairs and agreed on a Presidential Statement which contains the following sentence: "The Security Council attaches vital importance to promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace."²

- What does the commitment by the General Assembly mean? And how can this

¹ General Assembly resolution A/RES/60/1. See in particular paragraphs 11, 16, 21, 24 (b), 25 (a), 119 and 134.

² S/PRST/2006/28. See also <http://www.un.org/News/Press/docs/2006/sc8762.doc.htm>

be done?

- Could it against the background of the manifestations by the Assembly and the Council be said that international law means that the foremost duty of any government is to strengthen democracy and the rule of law?
- Is there a right to democracy in terms of “human rights” under international law?

There are rules in the UN Charter that forbid the use of force against the territorial integrity or political independence of any state unless certain conditions are met.

- How are these laws respected?

In more general terms the following questions could be put.

- What is the relationship between norms adopted at the national level and norms adopted at the international level?
- Reference is often made to the “proliferation” of international norms, both binding norms and so-called soft law. Will this pose a risk for a coherent international legal system in the future?

It is evident that new phenomena will occur that require new rules at the international level. New rules are also an inevitable consequence of globalisation.

- Will an increasing number of international agreements pose a risk that obligations will be contradictory?
- If so, what will be the difficulties when the obligations are to be implemented and applied?
- Is there a risk that the system becomes inconsistent? If so, will there be negative effects on the respect for the norms agreed upon?

Reference is often made to new actors on the international arena.

- Who are the new actors in the field of international law?
- Is there a risk that transnational enterprises undermine the authority of national governments?

B. Analysis of violations of international law in later years

The point is often made that one of the root causes to the problems that we face in the world today is that international law is not fully applied or not applied equally to all. In the media there is a constant flow of information relating to violations of international law.

- Is it possible to list individual and concrete violations of this kind committed in later years in a structured manner for educational purposes?

It is often said that international law is not so clear, and different opinions are often expressed in the debate over specific actions by States.

- How can one best secure authoritative interpretation in such situations?

C. How can violations of international law be avoided in the future?

Taking the words of the Security Council as a point of departure it is obvious that justice and the rule of law, including respect for human rights, are indispensable elements for lasting peace, the following questions should be analysed.

- Which is the best way for governments to promote justice and the rule of law?
- What is the role of intergovernmental organizations in this field?
- Is there a way of organising legal technical assistance in a more efficient and effective manner than what is the case today?
- What is the role of the media in this context? How can they best be engaged?
- Is there a way in which business can be engaged in addition to the Secretary-General's Global Compact and within the framework of Corporate Social Responsibility?
- What is and what should be the role of NGOs in promoting democracy and the rule of law?

Some States are still not party to key international agreements. The Secretary-General is trying to encourage adherence to such treaties through the annual Treaty Event.

- Are there other actions that could be taken to increase participation in such treaties?
- What are the principal obstacles to universal participation in some key treaties and what measures could be pursued to increase the level of participation?