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HAGUE ACADEMY OF INTERNATIONAL LAW

ACTUALITÉ
DE LA CONFÉRENCE DE LA HAYE DE 1907,
DEUXIÈME CONFÉRENCE DE LA PAIX

TOPICALITY
OF THE 1907 HAGUE CONFERENCE,
THE SECOND PEACE CONFERENCE

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5. REMARKS
BY H.E. H. CORELL¹

Mr. Foreign Minister,
Dr. Boutros-Ghali, President of the Curatorium of the Academy,
Professor Daudet, Secretary-General of the Academy,
Excellencies, Colleagues and Friends,

Allow me, first, to extend my warmest thanks to the Academy for inviting me to address you on this occasion.

Among the participants in this colloquium I recognize many friends from my years as the Legal Adviser of the Swedish Ministry for Foreign Affairs and, indeed, from my time as the Legal Counsel of the United Nations from 1994 to 2004. I would like to thank once again Dr. Boutros-Ghali for asking me to join his team when he was Secretary-General of the United Nations. I would also like to pay tribute to Ralph Zacklin, who was my deputy during my United Nations years.

Professor Daudet suggested that I reflect on my UN experience in connection with some of the aims of the Hague Conference. I will do that, although time allows only for some very brief remarks. But I will also reflect on the effectiveness of "the legal and political structure of today's world", to quote from the invitation to the colloquium.

For someone with his roots in a national judiciary it is natural to take as a point of departure one of the paragraphs in the preamble of the 1907 Convention for the Pacific Settlement of International Disputes: "Desirous of extending the empire of law and of strengthening the appreciation of international justice." Today we would of course refer to "the rule of law" rather than to "the empire of law".

Over the past hundred years we have seen an extraordinary development towards the establishment of the rule of law both at the national and international level. If we focus only on the few years that have passed since the Berlin Wall came down, several new instruments and institutions have been established.

1. Former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations.

Let me first mention the law of the sea; matters relating to the seas have great potential for disputes among States. When the UN Convention on the Law of the Sea entered into force in 1994, the Seabed Authority was established in Kingston, Jamaica, in the presence of the then UN Secretary-General Boutros Boutros-Ghali.

Two years later, the International Tribunal for the Law of the Sea was established. It was inaugurated in Hamburg in October 1996 also in the presence of Secretary-General Boutros-Ghali. I still remember him repeatedly asking why this new Court was not a UN institution. Without going into detail as to why it is not, suffice it to say that the Tribunal is closely linked to the United Nations through an agreement.

The last of the three institutions established by the UN Convention on the Law of the Sea — the Commission on the Limits of the Continental Shelf — held its first meeting in New York in June 1997. This Commission, serviced by the UN Secretariat, will be of great importance in the years to come. There are presently several applications pending before it. Of particular interest in this context is the development in the Arctic, where the melting of the sea ice results in sea areas opening up for navigation and for exploitation of mineral resources.

I venture to suggest that the UN Convention on the Law of the Sea is one of the greatest contributions to international peace and security that have been created under the auspices of the Organization.

Let me now focus on international criminal law. This law is closely linked to the general topic of the 1907 Conference, namely humanitarian law and the efforts to create peace among nations.

It is fair to say that we have seen a remarkable development in the field of international criminal law over the past few years. It started with an initiative in the Sixth Committee of the UN General Assembly in 1989 to revitalize the work towards the creation of an international criminal court. Many contributed to the work leading up to the successful 1998 Rome Conference. I would like to mention, in particular, the work of the International Law Commission and its working group under the chairmanship of Professor James Crawford, who is with us today. But also Adrian Bos, Philippe Kirsch and many others should be remembered.

However, it goes without saying that this work may not have been so successful if we had not in parallel experienced the development in the former Yugoslavia and Rwanda. In 1993 and 1994, respec-

tively, international tribunals for those regions were established by the Security Council. They are still in operation with jurisdiction over genocide, war crimes, and crimes against humanity. But the question we should ask today is how the mighty Security Council can allow itself to be embarrassed by the fact that two of the main suspects — Radovan Karadžić and Radko Mladić — are still at large.

The Statute of the International Criminal Court was adopted on 17 July 1998. It was ratified in record time and entered into force on 1 July 2002, only four years after its adoption. In the meantime an agreement on the Special Court for Sierra Leone had been negotiated between the United Nations and that country. It was signed on 16 January 2002. Today the Special Court is in full operation. A former Head of State is on trial before the Court, which for this case is not sitting in Freetown but here in The Hague.

The most recent among these institutions are the Extraordinary Chambers within the national courts of Cambodia. The task of these Chambers is to try the senior Khmer Rouge leaders. The agreement between the United Nations and Cambodia was signed on 6 June 2003 after several years of painstaking negotiations. The Chambers have only recently started to operate and it is yet too early to say how this effort will develop.

All these institutions should be seen as necessary corollaries to the courts that already existed when this development started, not only to the Permanent Court of Arbitration and the International Court of Justice, the principal judicial organ of the United Nations, but also to the existing regional courts.

I would like to see these institutions and the many international agreements, in particular the agreements in the field of human rights, as extremely important parts of “the legal and political structure of today’s world”. Over the years we have also seen great steps towards democracy and the rule of law. And yet, there is so much more to be done. As a matter of fact, the development in later years gives reason for concern unless States change their behaviour.

One of the initiators of the Second Peace Conference and indeed also one of the supporters of this Academy was the United States Secretary of State at the time, Elihu Root. You may recall that he was awarded the Nobel Peace Prize for the year 1912. In his lecture delivered in acceptance of the prize he spoke of causes of war — among them race, local prejudice and national “amour propre” — and added:

“With these go the popular assumption, often arrogant, often ignorant, that the extreme claims of one’s own country are always right and are to be rigidly insisted upon as a point of national honour. With them go intolerance of temperate discussion, of kindly consideration, and of reasonable concession.”

Unfortunately, this remarkable statement is just as relevant today as it was a hundred years ago. The only difference is that the challenges that humanity is facing today are even greater than at that time.

On 1 December 2004, the High-level Panel on Threats, Challenges and Change presented its recommendations to then UN Secretary-General, Kofi Annan. The Panel maintained that any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system is a threat to international security. Against the background of this definition the Panel identified six clusters of threats with which the world must be concerned now and in the decades ahead:

- economic and social threats, including poverty, infectious diseases and environmental degradation;
- inter-State conflict;
- internal conflict, including civil war, genocide and other large-scale atrocities;
- nuclear, radiological, chemical and biological weapons;
- terrorism; and
- transnational organized crime.

A common denominator in addressing these threats is a well-functioning system of collective security. Such a system was established through the Charter of the United Nations. However, a precondition for making this system work as it was intended is that the Members of the Organization respect the Charter.

And this is where I felt the greatest sadness when I left the United Nations in March 2004. I came to the United Nations with a very positive opinion of the Organization and also inspired by Dag Hammarskjöld’s thinking on the role of the international civil servant. I witnessed remarkable efforts by the Organization, and I also saw individual staff members making extraordinary contributions to its work. As in every organization, there are also the odd ones who do not live up to the standards and must be dealt with accordingly.

But, perhaps more importantly, I witnessed how States behaved. Some are stalwart defenders of the UN ideals. But I also saw some of them acting in flagrant violation of the Charter. Among them were the obvious ones. But among them were also States for which I had great respect. I had expected those States to be in the lead, setting the example. The question to be asked is: Why are the lessons from the past, including the experiences of two world wars, so quickly forgotten?

Never before has the need for an international society based on the rule of law been so great. The challenges ahead are tremendous. The six clusters of threats are a clear indication.

Without going into detail with respect to the causes, global warming must now be seen not only as an environmental issue but also in the context of international peace and security. At the same time we are witnessing an enormous geopolitical shift. The economic realities will change dramatically over the next few years. In parallel, the world population of some 6.5 billion today is expected to rise by 40 per cent by mid-century — to 9.1 billion!

Certainly, “the legal and political structure of today’s world” is influenced by the result of the Hague conferences. Some suggest that this structure will be different in tomorrow’s world. Maybe, but I certainly do not see an alternative to the nation State. The problem is rather that too many nation States are too weak. States with a deficit when it comes to democracy and rule of law constitute a threat to international peace and security.

But also States that claim to be democracies under the rule of law must take a serious look at themselves and ask whether they meet the standards that humanity is entitled to expect.

We must strengthen our efforts to establish democracy and the rule of law. In this work also civil society must engage just as it did when it initiated the Second Peace Conference. At the moment we are trying to organize a global rule of law movement. Time does not allow me to go into detail. But I am sure that you will soon hear more about the efforts of the International Bar Association, the American Bar Association, the International Legal Assistance Consortium, the Hague Institute for Internationalization of Law, and many others engaged in this work.

It is said about Elihu Root that he believed that international law, along with its accompanying machinery, represented mankind’s best chance to achieve world peace. But he also understood that it would

take much time to implement it effectively. The question is how much progress we have really made in a hundred years. I wonder what Elihu Root would have said, had he been with us today.

Finally, as lawyers we must be realistic and rational and act accordingly. But let us for a moment attempt to view the situation through the mind of a poet.

When I joined the United Nations in 1994 it struck me that some of the poetry by the Scottish poet Robert Burns reflects the ideals of the United Nations. I once ventured to suggest that his poem "To a Mouse" is really about the little people that the United Nations is trying to assist.

When the poet's plough has destroyed the little mouse's house — that little heap of leaves and stubble — Burns says to the mouse:

"Still thou art blest, compar'd wi' me:
The present only toucheth thee:
But och! I backward cast my e'e,
On prospects drear!
An' forward, tho' I canna see,
I guess an' fear!"

Now, if we cast our eyes backwards, what do we see? I suggest we see millions and millions of years. And not until we come to the very last fraction of this time do we see the human being appearing on this earth. And what if we look forward and guess? I suggest we see many more millions of years. The question is now: For how long will this species that has the audacity to call itself *homo sapiens* remain on earth?

Judging from the history of the earth we must realize that the day will come when — for reasons over which we may have no control — the conditions may be such that *homo sapiens* can no longer exist. What will be the verdict over this species when the most high sits in judgment? Will it be that at long last this species realized that it had to create conditions under which all human beings could live in peace and dignity — or?

May I close on the note that we must never ever give up striving for peace and security. But we will never reach this goal if we do not remember the lessons of the past.