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Abstract

Speech given at Session 4: The Legal Profession and Human Rights. The idea of promoting and protecting human rights is much older than the United Nations. However, it is fair to say that the fact that this topic is now high on the agenda all over the world is due to the efforts made by the world organization.

THE UNITED NATIONS AND THE LEGAL COMMUNITY IN PROMOTION OF HUMAN RIGHTS

*Hans Corell**

INTRODUCTION

The theme of this session is "The Legal Profession and Human Rights." I have chosen to speak on the topic "United Nations and the Legal Community in Promotion of Human Rights."

In preparing myself for this occasion, it struck me that this is an unprecedented opportunity for a U.N. official to reach out to the largest and most influential non-governmental international legal organization in the world and speak, although I must stress that I do this in my personal capacity, on a topic which concerns one of the most important issues on the agenda of the organization, human rights. I hope, therefore, that you forgive me if I frame my address more as a plea than as a discourse.

The idea of promoting and protecting human rights is much older than the United Nations. However, it is fair to say that the fact that this topic is now high on the agenda all over the world is due to the efforts made by the world organization.

When, in the aftermath of the Second World War, representatives of Member States of the United Nations drafted the Universal Declaration of Human Rights,¹ they did so with the atrocities of the war in fresh memory. The thirty articles adopted by the General Assembly, on December 10, 1948, have become one of the most important documents of the organization.

It is true that the document, in itself, is not binding in the same sense as a treaty. However, arguably, it can now be said to be part of customary international law, and under all circumstances it incorporates in a very succinct manner rights and freedoms which later have been elaborated upon in the instruments

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1. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948).

that now make up the International Code of Human Rights and related treaties. They also appear in numerous national constitutions and in instruments creating regional human rights regimes, such as those in Europe, America, Latin America, and Africa.

What has been achieved under the auspices of the United Nations is no less than an international constitution for the protection of human rights.

The International Covenant on Economic, Social and Cultural Rights of 1966² and the International Covenant on Civil and Political Rights³ of the same year have, until today, received 136 and 138 ratifications and accessions, respectively. Other conventions in this field include: the Convention on the Prevention and Punishment of the Crime of Genocide of 1948,⁴ with 123 ratifications and accessions; the Convention on the Political Rights of Women of 1952,⁵ with 109 ratifications and accessions; the International Convention on the Elimination of All Forms of Racial Discrimination of 1963,⁶ with 148 ratifications and accessions; the Convention on the Elimination of All Forms of Discrimination against Women of 1979,⁷ with 160 ratifications and accessions; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984,⁸ with 102 ratifications and accessions; and the Convention on the Rights of the Child of 1989,⁹ with 190 ratifications and accessions.

2. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200, 21st Sess., U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966).

3. International Covenant on Civil and Political Rights, G.A. Res. 2200, 21st Sess., U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966).

4. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 (1948).

5. Convention on the Political Rights of Women of 1952, 193 U.N.T.S. 135 (implementing principles of equality found in U.N. Charter).

6. International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (1969) (agreeing to follow principles embodied in U.N. Charter).

7. Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 14 (1981) (reaffirming fundamental human rights and equality of men and women).

8. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. E/CN.4/1984/72 (1984).

9. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/736 (1989).

There are many other conventions in the human rights field. In addition, a number of solemn declarations of the General Assembly or of conferences convened under the auspices of the United Nations embody human rights law or can be said to have become customary law. Under all circumstances these declarations represent international law *de lege ferenda*. The conventions in this field can be found in the United Nations publication *Human Rights-A Compilation of International Instruments*.¹⁰

A particular and distinct feature in many of these conventions is that States not only undertake to observe the obligations laid down, but they also undertake to subject themselves to international scrutiny by committees set up under the conventions. In some cases, individuals are allowed to file applications with these committees.

As common monitoring institutions in the field, we find the United Nations Commission on Human Rights, the Economic and Social Council, and the General Assembly where these matters fall within the competence of its Third Committee. Within the Secretariat there is a High Commissioner for Human Rights and a Center for Human Rights located at the United Nations office in Geneva.

The Security Council has increasingly been confronted with situations that constitute threats against peace and security, with their roots in violations of human rights. Human rights are also now prominent in the work of the Council. I refer in particular to the establishment of the two International Criminal Tribunals.

The work of the United Nations has also generated significant results at the regional level. Special conventions for the protection of human rights apply in the Americas, Africa, and Europe, where human rights commissions and courts have been established. I think it is fair to say that today the European Court of Human Rights functions as an international constitutional court within its field of competence. Important advances in the field of human rights were also achieved under the auspices of the Conference on Security and Cooperation in Europe ("CSCE"), of which the United States and Canada are also mem-

10. The texts are also available on the Internet at <http://www.un.org/Depts/Treaty>.

bers. This entity has been renamed the Organization for Security and Cooperation in Europe ("OSCE").

The point I want to make with this enumeration is that the law is there. Law is already protecting human rights in many different areas. What we must achieve now is implementation of this law. The United Nations can certainly do more to promote human rights, but the responsibility is, first and foremost, within its Member States. Its Member States consist of, to quote the Preamble of the Charter of the Organization, "[w]e the peoples of the United Nations. . . ."¹¹ Some of these people constitute a legal community. I now want to focus on that community in the promotion of human rights.

There are four points that I should like to highlight in this short address. First, human rights are universal. Second, to express concern for the human rights situation in a State is not an interference in the internal affairs of that State. Third, lawyers have a special responsibility in protecting and promoting human rights. Fourth, international law must be applied in a consistent manner and not only when it suits a particular State in a particular situation.

I. *UNIVERSALITY OF HUMAN RIGHTS*

Let us first look at the universality of human rights. A few moments ago, I made a reference to the Universal Declaration of Human Rights. This is, of course, a reference to the fact that the Declaration was meant to be applied worldwide. Often you hear the observation that human rights is an invention of the Western world and that it does not reflect values of Member States who were not represented during the elaboration of the Declaration. In fact, many States that are members of the organization today were not independent in the late 1940s. I recall that the membership of the United Nations at its founding was fifty-one, while today the organization counts 185 States among its members.

In examining the composition of the Human Rights Commission at the time when the Declaration was adopted and elaborated, it is true that many of its members were representatives of what is today referred to as the "Western and Others" group.

11. U.N. CHARTER, pmbl.

However, there were also other members present. I should in particular like to mention Afghanistan, Burma, China, Egypt, Ethiopia, India, Iran, Iraq, Lebanon, Liberia, Pakistan, Philippines, Syria, Thailand, Turkey, and the Latin American States.

In my view, however, it is of less importance to look at the membership of the organization at the time when the Declaration was adopted. This is a historical fact. What is more important is to look at the contents of the Declaration and ask why it could not be applied universally. The reason that this question has arisen is that human rights essentially deal with protecting the individual against his or her own government. I feel confident that if the Declaration were disseminated and discussed with people in general, there would be no doubt the Declaration and related human rights treaties would receive resounding support. I fail to see that human beings would have different aspirations depending on where we live on this earth. I am fully confident that individuals all over the world are equally concerned to be protected against arbitrary executions or torture, and that they would like to be protected against being put in prison without a fair trial, or denied their right of freedom of association and expression. It is telling enough to note that in some countries it has even been forbidden to disseminate the text of the Human Rights Declaration and related documents. The argument that human rights is an invention of a particular cultural society in the world is, in my view, a comfortable excuse for those who are not convinced that they would still have the confidence and support of their people if these rights were observed within the country in question.

A particular problem is reservations to treaties. In the Legal Office of the United Nations Secretariat, we observe too often that States ratify conventions with reservations which are so general and sweeping that the commitment of the ratifying State is cast in doubt. In many instances, these reservations are clearly against the object and purpose of the treaty in question. Fortunately, there are States who object against such reservations, but the practice is disquieting since it risks bringing treaty law into disrepute. This has given rise to an evolution in the law governing treaty reservations whereby organs charged with the monitoring of the implementation of human rights treaties have increasingly undertaken the function of determining the compatibility of a reservation with the treaty's object and purpose.

It is, however, reassuring that the idea of protecting human rights is spreading and that many governments have come to realize that observance of human rights is the best way to achieve democracy and rule of law and, as a result, peace and prosperity.

An important role for the legal community is to explain that human rights are universal and to refute the argument that they are not fully applicable to all States.

II. *EXPRESSION OF CONCERN FOR HUMAN RIGHTS*

The second point, to express concern for the human rights situation in a State is not an interference in the internal affairs of that State, is equally important. It is true that the Charter of the United Nations expressly lays down in Article 2 that nothing in the Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State.¹² This provision applies today and it is, no doubt, a cornerstone of the United Nations. However, consistent with the idea that human rights are universal, we have seen a significant development in this particular area of the relationship between States.

I should in this context like to refer to the 1975 Helsinki Final Act,¹³ which deserves much of the credit for the bringing down of the Berlin Wall. This Act, adopted by the CSCE participating States, recognized the universal significance of human rights. The participating States undertook to constantly respect human rights and fundamental freedoms in their mutual relations and to endeavor, jointly or separately, in cooperation with the United Nations, to promote universal and effective respect for them. Under the 1990 Charter of Paris for New Europe,¹⁴ the participating States declared their respect for human rights irrevocable and expressed their determination to adopt new procedures involving, *inter alia*, the services of experts on a roster of eminent persons experienced in human rights issues. Such procedures were later developed.

The question was also discussed in the United Nations. The

12. U.N. CHARTER art. 2, ¶ 7.

13. Final Act of the Conference on Security and Co-Operation in Europe, Aug. 1, 1975, 14 I.L.M. 1292.

14. See 1990 Charter of Paris for a New Europe, a New Era of Democracy, Peace, and Unity, Nov. 21, 1990, 30 I.L.M. 190 (declaring Member States' commitment to human rights and fundamental freedoms).

concluding document of the 1993 United Nations Vienna Conference on Human Rights¹⁵ declared the promotion and protection of human rights a priority objective of the U.N. in accordance, particularly, with the United Nations Charter purpose of international cooperation. It also declared that in the framework of the purposes and principles of the United Nations, the promotion and protection of all human rights is a legitimate concern of the international community.

Also, in the practice of the United Nations it has become more frequent for the Commission on Human Rights and the General Assembly to express themselves on the human rights situation in a particular Member State. These actions are often vigorously objected to by the Member State in question, and the argument is made that the reason that the matter is on the agenda is more political than based on genuine concern for the human rights standards in the State in question. This supposition may sometimes be true, in the sense that the fact that the question is addressed by the Commission on Human Rights and the General Assembly is based on political decisions by the participating States. From a legal point of view, however, every issue has to be examined on the basis of the underlying treaty obligations. The fact that a particular Member State is the focus of scrutiny, a task often entrusted to rapporteurs nominated by the Chairman of the Commission on Human Rights, must not result in that scrutiny is conducted inappropriately or in violation of applicable treaties.

This brings me to the very important element of international monitoring of human rights. I mentioned a few moments ago that many conventions contain mechanisms for international control, and even opportunities for individuals to make applications to international monitoring instances. This feature of human rights protection is of tremendous importance. Only when Member States subject themselves to this monitoring can they be said to truly follow the ideas of the protection of human rights and can also speak with much more legitimacy when they address human rights concerns or violations in other States.

The whole issue must also be considered in the context of

15. *See* United Nations World Conference on Human Rights: Vienna Declaration and Programme of Action, June 25, 1993, 32 I.L.M. 1661 (reaffirming commitment of Member States to promote human rights and fundamental freedoms).

peace and security. An additional reason why it must be appropriate for Member States to voice concerns about human rights standards in other States is that violations of human rights often lead to conflicts that threaten peace and security. A closer examination of the root causes of any armed conflict in the world today would most probably lead to the same conclusion: at the heart of the conflict you will find violations of human rights.

The legal community has an important role to play in maintaining and recognizing that expressions of concern for human rights in a State should not be seen as an interference in the internal affairs of that State.

III. *LAWYERS' RESPONSIBILITY TO PROMOTE HUMAN RIGHTS*

Let me now address the third point. Lawyers have a special responsibility in promoting human rights. As indicated in the program for this celebration, lawyers, with their training and skills, have a special responsibility to identify abuses of human rights and propose workable solutions. The legal community has a unique role to play in upholding the rule of law worldwide. The question is: How can we do this? There are many ways.

If we examine what we mean by unique role, I think you would agree that the uniqueness follows the particular position within the legal community that the lawyer occupies.

Many lawyers are also politicians. This gives them a unique opportunity to participate in the national legislative process. In addition, they have the general supervisory role that politicians, and in particular parliamentarians, should play in ascertaining that their country lives up to its international commitments. Human rights now has almost a constitutional role in legislative work, and therefore it is important that lawyers who participate in the legislative process observe closely that the international obligations are fulfilled.

Lawyers who advise governments and parliaments are also in a unique position because they can contribute to ascertaining that their country lives up to the obligations that flow from treaties in the field of human rights. From the bodies that monitor the implementation of these instruments, there now also emanates an increasing number of decisions or judgments that constitute case law, which is an essential element in understanding

the international obligations. It is important that this additional element of human rights law is brought to the attention of those who make decisions at the national level.

Lawyers appear as agents of their governments before these international bodies. This means that they must defend their governments against applications filed by individuals against the government. Their obligation is certainly to defend their country to the best of their ability. However, in case the government is found in violation of an international obligation, these lawyers are in a unique position to advise the government on how to implement these decisions or judgments in the best way. Implementation of such decisions or judgments often entails amending national legislation. I know this from personal experience, having defended my government before the European Court of Human Rights for eleven years.

Some members of the legal community teach law at the university level. They have a crucial role in the promotion of human rights since they are in a position to influence new generations of lawyers during their most receptive years. Obviously, national legal education has to focus very much on the particular needs of the country in question. Most lawyers that graduate from law schools will occupy positions in their national judiciary or administration or work in the private sector. In their daily work they will be engaged in matters which fall within the ambit of criminal law, private law, and administrative law. It is, therefore, understandable that university curricula are designed to satisfy these particular needs. However, just as constitutional law is an important element in every lawyer's education, so should be international law and its very important component, human rights. It is, therefore, to be hoped that university curricula will focus sufficiently on the need to educate coming generations of lawyers in this field. Irrespective of where lawyers spend their active professional years, it is imperative that they exercise their profession against a common background of internationally-accepted norms which should be of guidance in all fields of the law.

Lawyers who are members of the judiciary also have a special role to play. Depending on the national legal system, international conventions might be directly applicable as national law. If not, it is still important to ensure that international commitments are honored at the national level. Therefore, in their

judicial functions, it is of essence that judges examine their national law against the backdrop of applicable international conventions, and in particular in the field of human rights. A true understanding of these obligations will also assist the judges in defining their own role and the importance of courts that exercise their authority independently and impartially.

Lawyers who appear before national courts also have a specific role in this context. Invoking international human rights obligations that apply directly or indirectly at the national level is an added guarantee for rule of law and proper administration of justice. An independent and fearless bar is an indispensable component in any proper national legal system. From what I have already said, it appears that there is also a specific role for lawyers that appear before international bodies on behalf of individuals invoking protection under human rights instruments.

Some of our colleagues in the legal profession become prosecutors or assist the national or municipal police. These colleagues have a special role to play in advancing respect for human rights. A substantial part of the legal provisions in this field deal with the protection of persons subject to criminal investigation or prosecution. In particular, lawyers assisting police forces have an important task in explaining the standards that the police must observe to guarantee the rights of the individual. It is important that the police force not become a threat to the very people it is set to protect.

A considerable number of lawyers will apply their profession in administration, be it at the central or local level. They can also play a significant role in ascertaining that the rights and freedoms of citizens are respected. We must not forget that administrative authorities in many instances hand down decisions that are of utmost importance for the individual citizen. Decisions in the fields of social security, public assistance, public sector medical care, physical planning including building permits, and environmental law, could be mentioned as examples.

Irrespective of where we serve in the legal community, however, we all have a special responsibility to advance human rights. We are privileged because we have had the opportunity of studying the role of human rights in society under the rule of law. We have an obligation to share this knowledge with others. For a genuine observation of human rights, it is important that

this knowledge also be spread to the grass roots. In this context, I cannot stress enough the importance of non-governmental organizations. Apart from the universities and the ministries of foreign affairs and justice, it is often within the non-governmental organizations, both at the international and the national level, that you find people who have a deeper devotion to, and knowledge of, human rights. It is important that lawyers participate in organizations for the promotion of human rights.

It goes without saying that the International Bar Association has a significant role to play here, both directly and through its national bar associations and law societies.

IV. *CONSISTENT APPLICATION OF INTERNATIONAL LAW*

I have now come to my fourth and last point. International law must be applied in a consistent manner.

There are those who would argue that advocating human rights is a biased message to countries that have not yet reached the level of development that can afford the luxury of granting human rights to their citizens. This is definitely not the message that I would like to convey. On the contrary, human rights must be observed by all countries. The need for universal observance is clearly demonstrated by the experiences of international monitoring institutions. No country is beyond reproach in this area. It is important that all countries subject themselves to international control mechanisms. Only in this way can we guarantee that human rights will be applied at the national level in accordance with common international standards.

In this context, it is important to note that human rights is only one aspect of international law. Other elements of this law must also be respected and implemented. A State that vigorously invokes international law in the field of human rights has little credibility if it does not observe its own obligations in other areas of this law. Obligations under international law are not like a smorgasbord, where you can pick and choose. Only by applying international obligations in a consistent manner can a State criticize with legitimacy other States for failure to honor international commitments.

It is, therefore, almost a tragedy that today, when, for the time being, there is only one superpower in the international arena, we observe that this Member State, while criticizing others

for not honoring their international commitments, does not fully honor its obligations under the United Nations Charter. I refer to the fact that one of the founding members of the United Nations, its host State, and a State under rule of law, does not honor its obligation to pay its dues to the world organization.

CONCLUSION

We must ask: what will be the common inheritance that we will hand down to coming generations? Certainly, we will develop fields like art, music, and literature, and we will make further technical and scientific advances. But, if we are to live in peace in the future, there is one thing that must be common to all of us, that must be universal, and that is international law and our obligations under this law — in particular, the obligation to protect human rights and fundamental freedoms. This concept must, first and foremost, be developed at home, at the national level. It is here that lawyers, each of us in our unique position and with our particular opportunities, must contribute so that existing and coming generations may have a dignified existence on this earth. This, in my view, is the task of the legal community in the promotion of human rights.

I thank you for your attention.