Preventive & Peace-Making Diplomacy & the Role of International Law in Conflict Resolution

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The United Nations Decade of International Law, from 1990 to 1999, has coincided with the tremendous changes which have taken place in the system of international relations - changes which, I believe, represent much more than just a transformation from a Cold-War to a post-Cold-War structure. Rather, it would appear that what we are facing today is a shift in the civilizational paradigm, encompassing not only political, but also economic, social and, indeed, all spheres of international and human relations.

In the world today, we are faced with a variety of problems - human rights; ethnic and religious conflict; the search for a new framework for international security and new multilateral treaties in the field of arms regulation and disarmament; the pursuit of progress towards development - to name but a few. In such circumstances, international law provides an analytical framework in which to approach these challenges and a powerful basis for action to resolve the

difficulties; it constitutes both a source of new ideas and a tool to help us create a new vision of international human relations and a new reality. International law is a dynamic resource of enormous potential.

For those of us who work in the political arena, international law does not only consist of treaties - important though they are. Rather, international law forms a body of work that is changing the language of international discourse and, more importantly, the content and perspective of international interactions. Today, even those who do not respect international law adopt its language and terms of reference; even its most flagrant violators feel compelled to assert the compatibility of their actions with its principles. All of this testifies to the fact that international law constitutes humanity's common set of values, as well as a true code of behaviour for States.

During this current transitional period, international law also appears to be going through a process of change. The basic philosophy of international law during the Cold War was the law of peaceful co-existence and balance of power. Today, this is evolving - from the law of peaceful co-existence to the law of partnership amongst nations and balance of interests. This change should, in itself, affect the very premise of international law.

Whilst we can do much to improve the machinery of international law, its effectiveness as a strategic tool for progress will ultimately depend upon whether States truly have the political will to embrace its principles and share its ideals. It is, thus, tremendously important to develop the kind of approach which will encourage States to show their respect for international law in their actions. First and foremost, States must agree to adhere to those international norms to which they

hope to bind others. Secondly, they must ensure that international law is not violated with impunity. And thirdly, they must ensure that international cooperation is a genuine commitment, not merely a political slogan. The international community has made a lot of statements; what is needed today is to begin to take action, to translate words into deeds.

In declaring the 1990s as the United Nations Decade of International Law, the General Assembly, in 1989, outlined its main purposes as being:

- to promote acceptance of, and respect for, the principles of international law;

- to promote ways and means for the peaceful settlement of disputes between States;

- to encourage the progressive development of international law and its codification; and

- to encourage the teaching, study, dissemination and wider appreciation of international law.

In pursuance of this objective, the programme for the second term of the Decade, which was approved by the General Assembly in 1992, stresses the necessity for international and other organizations to promote acceptance of and respect for the principles of international law and to become parties to multilateral treaties. In particular, it emphasizes the need to develop a process for the elaboration of such treaties.

In further developing this vision and approach, the General Assembly decided, last December, that a United Nations Congress on Public International Law should be held in 1995 and

requested the Secretary-General to proceed with its preparation and to keep Member States informed of progress.

The programme for the second term also reflects the new demands and challenges we are now facing in our transition to what is often called the New World Order - although, in fact, there is nothing "new" in this particular expression. If we look back to the beginning of the 1900s, the term "New World Order" has been used extensively throughout the whole of the 20th century; during the Cold War era, the German philosopher, Karl Jaspers, wrote about the New World Order as far back as 1949. The major issue is not the expression itself but, rather, the substance of this New World Order - and this is tremendously important to understanding the process of transition.

The new world situation is characterized by multipolarity. Whilst in terms of military might, material and human resources, there are still two superpowers[1] - one healthy and one ailing - new such powers could well appear in the international arena. The question arises as to what kind of superpowers there might be at the end of the current transitional period and whether they would be part of the international community or behave predominantly in a unilateral way, as did the two superpowers during the Cold War era. I strongly believe that what will, in fact, emerge is a new pattern of democratic behaviour, by superpowers as well as other countries, who will act as a family of nations.

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[1]I, personally, see nothing wrong in the term "superpower", if used as an indication of the might of a country, rather than to illustrate behaviour which is contrary to the interests of the majority of nations.

What is of importance under these changing conditions is to foster, amongst all members of the international community, a mutually-enriching process of interaction, in which improving communication should be the first step. Humanity today needs to develop interdependently, to share its "recipes for success" through the exchange of ideas and experience, to the mutual benefit of all. For the first time ever, we have the opportunity to create one, universally-accepted, common way of dealing with matters other than through the creation of separate blocs.

Today, it is no longer *Pax Britannica*, *Pax Sovietica* or *Pax Americana*, but what I would call *Pax UN* which is emerging in international affairs. This *Pax UN* or *Pax Multilateralis* is the New World Order. This is not to say that *Pax Multilateralis* excludes any kinds of bilateral or unilateral actions; however, all are taking place under the umbrella of the United Nations through their existing global and regional arrangements. For example, the question of the former Yugoslavia is being dealt with through international machinery - the Conference on the Former Yugoslavia in Geneva or the Security Council in New York - but this does not exclude contributions from individual countries. What is most important is that the actions of such countries should be part and parcel of a multilateral process. Whilst unilateralism is possible, it should not work against multilateralism. Multilateralism is an all-encompassing concept which includes multilateral, bilateral and unilateral actions. International law helps to strengthen multilateralism.

In today's shifting circumstances, the task of the United Nations is to endeavour to channel the processes of change in such a way that they progress along a democratic, non-violent evolutionary route. Indeed, this is the basic premise of the Secretary-General of the United Nations in his report, *An Agenda for Peace*. This report addresses the concept of peace

operations, in particular preventive and peace-making diplomacy and, for the first time in political thinking, gives us a broad understanding of the issues as well as the specific action required to be taken for conflict prevention and resolution.

Preventive diplomacy, as defined in *An Agenda for Peace*, is action taken, firstly, to prevent disputes from arising between nations; secondly, to prevent existing disputes from escalating into conflict; and, thirdly, to limit the spread of conflict once it has occurred. *An Agenda for Peace* contains a number of suggested measures to prevent further escalation of conflict once it has erupted and which have already been implemented in practical actions. Firstly, in order to avoid the outbreak of a crisis, a fact-finding mission may be activated. In fact, there is a special provision for fact-finding missions in the United Nations Charter but during the Cold War such UN activities were effectively paralysed. Following the end of this era, about 100 fact-finding missions have been carried out over the past two years, as a result of which the UN has obtained independent sources of information, on the basis of which an "early warning system" is being developed. Under the terms of the Charter, the Secretary-General is able to raise these issues in the Security Council which may consider the "early decision-making".

Experience with fact-finding missions has shown that they serve a much greater purpose than simple information-gathering. The 1991 missions to Moldova, the Solomon Islands and Papua New Guinea - at very critical moments - provide good examples. The missions were accepted by the protagonists as an opportunity to express their views to an impartial third party, as a result of which negotiations were able to begin. In other words, the fact-finding mission itself contributed to prevention of a conflict situation. In view of this, these kinds of missions to

different parts of the world now tend to be called "goodwill" rather than "fact-finding".

The scope of activities of the missions dispatched by the UN is rapidly growing. Increasingly, missions have to deal not only with political issues, but also to evaluate a particular situation in a comprehensive manner, taking account of humanitarian, social and economic problems. For example, the United Nations inter-agency mission to Yemen in July 1994 resulted in a consolidated inter-agency appeal for $22 million to meet urgent humanitarian needs.

Another kind of UN mission appears to be emerging, which I would call a "final warning". Recently, the United Nations Secretary-General announced his intention to send a special mission to Haiti to convince the military authorities to implement Security Council resolution 940 (1994) in order to avoid a military invasion.

The second preventive diplomacy activity to be undertaken involves confidence-building measures. Such measures traditionally included transparency in armaments; however, these days people-to-people contact is also encouraged. This is not always easily accepted but efforts are directed at trying to convince the parties to accept this kind of activity. This measure is used, for example, in Cyprus. In the International Conference on the Former Yugoslavia, there is a Working Group on confidence-building measures which has at least succeeded in providing safe passage for humanitarian aid convoys.

The most recent development in the field of preventive diplomacy is deployment of a peace-keeping force before a conflict even erupts. In 1992, for the first time in UN history, military contingents were deployed in Macedonia for the purpose

of preventing possible conflict in the area. Experience has shown that this kind of preventive diplomacy is a very effective undertaking.

An Agenda for Peace also recommends establishment of demilitarized zones before a conflict erupts as a form of preventive deployment. This may be done on both sides of a border, with the agreement of all the parties to separate, potential conflicts, or only on one side of a border, at the request of one party, in order to remove any pretext of attack by a possible aggressor.

With regard to peace-making diplomacy, this constitutes action taken to bring the hostile parties to agreement, essentially through such peaceful means as envisaged in Chapter VI of the UN Charter. The UN is largely involved in using political/diplomatic methods of peace-making. In addition to consultation and negotiation, mediation is another means at the disposal of the Special Representatives of the Secretary-General who are actively involved in conflict resolution in all parts of the world.

Recent practice has led to the emergence of a new means of peace-making - facilitation. Tanzania recently acted as facilitator in reaching the Rwanda agreement and Russia is playing this role in the Georgia-Abkhazia conflict. Facilitation encompasses creation of favourable conditions for negotiation and is used in conjunction with other means of peace-making.

The importance of the active use of legal instruments in conflict prevention and the peaceful settlement of disputes cannot be over-emphasized. Legal means have been implemented far less frequently than desired in this respect and they are still

under-utilized, both in the preventive stages of crises and in their eventual solution.

In the past, however - particularly immediately after the First World War - there were a number of cases in which legal procedures were instrumental in solving conflicts of a diverse nature. One of the prime examples was the solution of the Åland Island question, whereby Sweden and Finland reconciled their differences through a legal instrument. This is still a workable and very effective model which illustrates how problems involving national minorities may be solved.

Even in recent decades, there are some encouraging examples to be found. For instance:

- in 1965, the Soviet Union mediated a cease-fire between India and Pakistan in their conflict over Kashmir;

- in 1980, Iceland and Norway settled their dispute over the dividing line for an area of the Continental Shelf through conciliation;

- in 1986, the Secretary-General himself acted as an arbitrator in the *Rainbow Warrior* case between France and New Zealand;

- in 1991, the Gabčíkovo Dam controversy between Czechoslovakia and Hungary was referred to the International Court of Justice.

These, and other examples, show that all the legal means of dispute settlement - including mediation, conciliation, arbitration and adjudication - have considerable potential for settlement of disputes between States and, if properly used, can

help to significantly improve the international political climate.

Legal instruments should certainly be used much more extensively for the purposes of conflict prevention and resolution and the classic legal trio of arbitration, mediation and judicial settlement should occupy a prominent place in preventive and peace-making diplomacy.

At the beginning of 1994, the Secretary-General of the United Nations visited the International Court of Justice in The Hague in order to stress the importance of legal instruments. He expressed his strong desire - and indeed his intention - to encourage the utilization of the International Court of Justice. In addition, the United Nations has very actively encouraged the revitalization of the Permanent Court of Arbitration, as well as other institutions able to mobilize a whole range of legal means of dispute settlement.

Preventive and peace-making diplomacy is no longer limited to political conflict. There is strong desire on the part of UN Member States to apply it to other issues relating to, for example, the environment and economic affairs, since the whole idea of international cooperation is aimed at prevention of conflicts and disputes between States. I envisage this playing an ever-increasing role in the new, emerging system of international relations.

Another aspect of dealing with conflict resolution through legal means concerns the strengthening of the involvement of regional organizations. There is a need to reinforce Chapter VIII of the UN Charter which deals with regional arrangements. Today, we are witnessing the emergence of a new kind of regional structure: the transcontinental organization.

For example, the Conference on Security and Co-operation in Europe (CSCE) is, now, a transcontinental entity. It incorporates members not only from Europe, but also North America and Asia and stretches from Vladivostok to Vancouver, from Murmansk to Malta, and from Dublin to Dushanbe. It is a qualitatively new intercontinental structure. Other similar arrangements emerging today are the Non-Aligned Movement and the Asia Pacific Economic Co-operation (APEC) Council.

If interlinked, these transcontinental arrangements could form an interlocking network of interdependence and stability which would be especially beneficial in the current transitional period. As for the traditional regional organizations, such as the Organization of American States (OAS) and the Organization of African Unity (OAU), etc., they now have far more opportunities to participate in conflict prevention and the peaceful settlement of disputes and, in my view, the legal instrument should be used far more actively at this level.

If we again look at examples, there are quite a few which may be applied today in dealing with crises. For instance:

- the Organization of African Unity mediated in the border dispute between Algeria and Morocco and has been particularly successful in implementing legal means for settling disputes in Rwanda and Liberia;

- The Organization of American States persuaded Honduras and Nicaragua to resolve their differences over the arbitral award by the King of Spain by referring it to arbitration - a legal procedure which could be used to a much greater extent.

These are very tangible results of the activities of organizations at the regional level and I believe that such arrangements could be utilized much more extensively in the future.

The emergence of the new regional and sub-regional structures is a very welcoming development. However, what is important in dealing with regionalism nowadays, in my view, is to avoid what became a characteristic of the Cold War - that is, the division of the globe into spheres of influence.

Today, it is essential that transcontinental and regional organizations be, first and foremost, transparent in their activities. It is also extremely important that they should be interlinked. There are a number of examples where certain countries are members of several regional arrangements and this has strengthened interdependence.

In considering the Decade of International Law from a UN-point of view, I would particularly like to mention treaty-making which is closely linked to UN activities in all fields. Today, we are facing a new period where treaty-making is becoming a very important practical issue, not only in crisis solution but also in such other domains as arms regulation and disarmament.

The Conference on Disarmament - of which I am Secretary-General as well as Personal Representative of the United Nations Secretary-General - is the unique negotiating forum in the field of disarmament and has now entered a period of practical activity. The recent successful conclusion of negotiations on an international convention on the prohibition of production, storage and use of chemical weapons and on their destruction provided a very good example of active, multilateral negotiation. The Conference is now working on preparation of the Comprehensive

Test-Ban Treaty and there is serious determination on the part of Member States to find a solution to this issue. This was illustrated - from a diplomatic point of view - by the fact that, when commencing their work, there was not much procedural discussion amongst the delegates; rather, they immediately began dealing with substantive matters, including the organization of a special ad hoc committee. Two special groups have been established - one to deal with verification issues and the other with the legal aspects of the treaty itself.

The Conference may also begin negotiation of another treaty, on the prohibition of production of fissile material for nuclear weapons or other nuclear explosive devices (the so-called "Cut-Off Treaty"). This, like the Comprehensive Test-Ban Treaty, would make a very important contribution to strengthening the existing non-proliferation regime and the process of nuclear disarmament.

As a final point, it is clear that education is a tremendously important aspect of international law and one that should be addressed not only to students, but also to political leaders.

In concluding, I would like to stress that in resolving international disputes and conflicts through all available means today, we are facing one more problem - the time factor. The rate of change of the world political environment has accelerated to such an extent that a continual process of adaptation, both structural and substantive, is imperative. Today, it is essential to know not only what to do and where to go, but to do it as fast as possible, with actions based on international law.

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